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The Governor in the Indian Political Milieu

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Abstract

This paper endeavours to outline the issues surrounding the office of the Governors in India from a historical, academic, legal-constitutional and political point of views while understanding their various theoretical-constitutional aspects and the ground realities manifested in form of various conflicts and dilemmas of this office. This paper attempts to critically evaluate the importance of the postand the myriad abuses of thisoffice in Indian domestic politics from 2014 onwards.

Keywords: Historical Backdrop, Constitutional status of Governors, Role of the Governors from 2014 onwards.

Introduction

The Governor's role and powers have yet again become a controversial issue in Indian politics after about three decades of comparative calm. This coincides with the emergence of a single party with a clear majority at the Centre. During the last few years, the Governors of Karnataka, Madhya Pradesh, Kerala, Maharashtra, West Bengal and so on have played their roles in a way which has embroiled the office itself into a labyrinthine of endless controversies and contestations. It certainly did not add to the glory of the office. One cannot but remember the sharp controversies around the constitutionality of Governors' actions on many occasions during the 1960s and 1970s- setting unhealthy conventions for Governors in later decades to follow. It is not easy to erase the negative image of the state Governors as 'agents of the Centre'. Most of the controversies pertaining to the office of the Governor have been around the issues of: determining the timing for proving legislative majority, appointment of the Chief Minister, taking apparently long time in giving assent to bills or reserving bills for the President, demanding information about day-to-day administration, commenting adversely on specific policies of the state government and exercising powers of the Governor as a Chancellor of state universities.

There have been various well-intentioned and significant attempts to understand the role of the Governor in our federal, democratic set-up and to recommend ways to make this institution conducive to harmonious center-state relations, for example, the Administrative Reforms Commission of 1968, the Rajamannar Committee of 1969, Committee of Governors of 1971, Bangalore Seminar of Experts of 1983, the Sarkaria commission of 1983, various views and verdicts of the Supreme Court, along with others. All of them more or less agreed on the point that the image of the Governor as merely an agent of the Centre sitting in state capitals, desperately seeking an opportunity to run down the state government when it is in the hands of a party opposed to the party ruling at the Centre or trying to bring about a government of the same party as at the Centre, will be very dangerous to our federalism and democracy. And all of them made extremely valuable recommendations to make the office of the Governor the "lynchpin of the constitutional apparatus of the state".

Historical Background

The responsibility for administration of India transferred from the East India Company to the British Crown by The Government of India Act, 1858. Functioning under the general supervision of the Governor-General,the Governor became an agent of the Crown. Although in a rudimentary form, the Montague-Chelmsford Reforms (1919) was an important step towards responsible Government (Chandra 1989: 167-170). The pivot of the provincial administration, however, was the Governor. Provincial autonomy was introduced by the Government of India Act, 1935.

The Governor was now required to act on the advice of Ministers

responsible to the legislature. Even so, it placed certain special responsibilities on the Governor, such as, prevention of grave menace to the peace or tranquility of the province, safeguarding the legitimate interests of minorities, and so on. On specific matters the Governor could also act on his discretion, functioning under the general superintendence and control of the Governor-General. In 1937 when the Government of India Act, 1935 came into force, the Congress Party commanded a majority in six provincial legislatures. They foresaw difficulties in functioning under the new system which expected Ministers to accept the decisions and directions of the governor without demur if the Governor exercised their individual judgement for the discharge of their special responsibilities. The Congress Party agreed to assume office in theseprovinces only after it received an assurance from the Viceroy that the Governors would not provoke a conflict with the elected Government.

The role of the Governors got changed after independence. Until the Constitution came into force, the provisions of the Government of India Act, 1935 as adapted by the India (Provisional Constitution) Order, 1947 were applicable (Gazette of India:1949: 23April). This Order omitted the expressions 'in his discretion', 'acting in his discretion' and 'exercising his individual judgement'. The Adaptation Order made it incumbent on the Governor to exercise these as well as all other functions only on the advice of their Council of Ministers[2]. Parliamentary system was adopted at the Central as well as state level. While the pattern of the two levels of government with demarcated powers remained broadly similar to the pre-Independence framework, their roles and inter-relationships were transformed. There were lengthy debates and discussions on various provisions regarding the Governor. Two major issues were dealt with-the first issue being, whether the Governor should be elected or not. The co-existence of an elected Governor and a Chief Minister responsible to the Legislature might have led to friction and therefore to structural weaknesses in administration. The concept of an elected Governor was therefore replaced with a nominated one, with Jawaharlal Nehru arguing that "an elected Governor would to some extent encourage that separatist provincial tendency more than otherwise. There will be far fewer common links with the Centre" (Nehru: 1949: 1 June).

The second issue was the discretionary power of the Governor. Following the decision to have a nominated Governor, limiting the discretionary powers was but imperative. However, some provisions were retained such as those relating to Tribal Areas in Assam where the administration was a Central responsibility. As an agent of the Union Government, the Governor could act independently of his Council of Minister under Article 163. Dr. Ambedkar argued for Article 163 and said that certain discretionary powers with the Governor were not contrary to responsible Government. According to Article 164 of the Constitution, the Chief Minister shall be appointed by the Governor. It reads as follows: "The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister, and the Ministers shall hold office during the pleasure of the Governor"[4]. Article 164 was based on the Government of India Act 1935. Its Section 51(1) reads as follows: "(1) The Governor's ministers shall be chosen and summoned by him, shall be sworn as members of the Council, and shall hold office during his pleasure…". It is indeed surprising to note that the members of the Constituent Assembly chose to focus on many points but completely missed the elephant in the room- appointment of the Chief Minister by the Governor. Pandit Thakur Das Bhargavaraised the issue, saying, "… here his discretion is too wide. Now, the Governor, if he so chooses, can appoint his Ministers and the Premier may be called upon to form a ministry from any party which is not the biggest party in the House. There is no bar against this. I would have liked a provision that the Governor shall only call for the leader of the biggest party in the Assembly to form the ministry….". (Bhargava:1949: 1June). Ambedkar, while addressing all other issues raised by other members, ignored this concern.

Also, the whole set of Articles relating to state governments were passed in a hurry in one day. Regarding the role of state Governor in India, an eminent political scientist, K.V. Rao argues that the whole structure of the Constitution in this regard was designed in the assumption that the Congress and its then high command would be in power for a long time. Having experienced the British administration's federal set-up in India, the Congress party was clearly in favour of a strong Centre while providing legislative powers to the provinces, giving a 'quasi-federal'flavour to the arrangement. Eminent scholar H.M. Seervai remarked that under the Indian Constitutional law, the problem regarding the exercise of power by the Governor while forming government only arose when the Congress party was defeated in some states in the 1967 elections. A large number of independent candidates and lack of a clear majority by any party further complicated the problem.

In effect, the'discretion' of the Governor to appoint the Chief Minister is illusory because the Governor holds the office during the pleasure of the President who is bound by the advice of the Council of Ministers at the Centre. There are very vague provisions with respect to the exercise of powers by the Governor and the lackadaisical approach by the Constituent Assembly while discussing provisions relating to the state executive clearly places the Centre at a superior and often at a patronizing position. Undoubtedly these cues were taken from the British rule.

Objective of the Study

The paper aims at bringing out the current improprieties being committed with the Constitutional post of Governors in several Indian states and to see the historical precedents enabling such pattern. It becomes pertinent to critically assess the issue academically and to enquire into the Constitutional, legal, political, historical, and judicial factors regarding this position which often times finds itself in the eye of the political storms.

Constitutional Provisions and their Scope

The Governor is appointed by the President and holds office during herpleasure [Articles 155 & 156(1)]. Article 154 vests the executive power of the states in the Governors, who exercise it either directly or through officers subordinate to them, in accordance with the Constitution. Under Article 163(1), they exercise almost all their executive and legislative functions with the aid and advice of their Council of Ministers. Practically, the executive power is exercised by their Council of Ministers, except in the limited sphere of their discretionary action.

Article 167 of the Constitution imposes duties on the Chief Minister to communicate to the Governor all decisions of the Council of Ministers and proposals for legislation and such other information relating to the administration of the affairs of the states and proposals for legislation as the Governor may call for and 'if the Governor so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council'. The information which the Governor is entitled to receive under clause (b) of the Article, must not only be related to the affairs of the State administration, but also have a nexus with the discharge of his Constitutional responsibilities. (The Constitution of India:2021: 116-122).

The nature and scope of these duties of the Chief Minister and the corresponding rights and powers of the Governor are to be understood in the context of their respective roles and responsibilities under a Cabinet system of government. Under the cabinet system of government, the Governor as Constitutional head of the State has 'a right to be consulted, to warn and encourage' and his role is overwhelmingly that of 'a friend, philosopher and guide' to their Council of Ministers (Sarkaria commission: 1983:16-17). The Governor also functions as a sentinel of the Constitution. The Governor acts as a link between the Union and the states. The rationale of Article 167 is to enable the Governor to discharge effectively this multi-faceted role, by affording access to necessary information relating to the administration of the affairs of the states and the legislative proposals. Article 167 provides options to the Governor to provide them with persuasive powers and not dictatorial powers to override or veto theproposals of their Council of Ministers. At best "they are powers of giving advice or counselling, delay for the need for caution and they are powers which may be used to build bridges between the Government and opposition".The efficacy of the advisory role of the Governor depends, in no small measure, on the respect which the incumbent of the office inspires in the mind of their Chief Minister and Ministers in particular, and the legislature and the public in general. The executive actions of the state government are taken in the name of the Governor in accordance with the rules of business framed under Article 166(3). Hence, it is the state Government and not the Governor who may use or be sued in respect to any action taken in the exercise and performance of the powers and duties of their office [Articles 361, 299(2) and 300], (The Constitution of India: 2021: 292-303, 236,237,122). The Governor may exercise certain functions in limited discretion, mentioned in Article 163(1), which read as follows:

1. There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of her functions, except in so far as she is by or under this Constitution required to exercise her functions or any of them in her discretion.
2. If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in her discretion shall be final and the validity of anything done by the Governor shall not be called in question on the ground that she ought or ought not to have acted in her discretion.
3. The question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired in to in any court.

The first part of Article 163(1) requires the Governor to act on the advice of their Council of Ministers. With an exception in the later part of the clause in regard to matters where she is by or under the Constitution required functioning in her discretion. The expression "required" requires that the Governor can exercise her discretionary powers only if there is a compelling necessity to do so. It has been heldthat the expression "by or under the Constitution" means that the necessity to exercise such powers may arise from any express provision of the Constitution or by necessary implication.Thus, the scope of discretionary powers as provided in the exception in clauses (1) and (2) of Article 163 has been limited by the clear language of the two clauses. It is an accepted principle of a parliamentary democracy (responsible form of government) that the powers of the Governor (Constitutional or formal head of the state) should not be enlarged at the cost of the real executive (the Council of Ministers). The scope of discretionary powers has to be strictly construed.The area for the exercise of discretion must be well defined. Obviously, Article 163 does not provide a general discretionary power to act against or without the advice of Council of Ministers. In the limited discretion, the choice of action should not be arbitrary or fanciful but it must be based on reason, good faith and larger good.

Certain provisions of the Constitution expressly provide for the Governor to act according to individual judgement, such as,

1. Reservation for the consideration of the President of any Bill which, in the opinion of the Governor would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is in by the Constitution designed to fill [second Proviso to Article 200].
2. The Governors of Arunachal Pradesh, Assam, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura have been entrusted with some specific functions to be exercised by them in their discretion (videArticles 371A, 371F and 371H and paragraph 9 of the Sixth Schedule).

3. The Governors of Arunachal Pradesh and Nagaland have been entrusted with a special responsibility with respect to law and order in their respective states. In the discharge of this responsibility, they are required to exercise their 'individual judgement' after consulting their Council of Ministers.
4. Any Governor on being appointed by the President as the administrator of an adjoining Union Territory, has to exercise functions as administrator independently of the State Council of Ministers [Article 239(2)].

Articles 371(2) and 371C (1) provide that certain special responsibilities may be entrusted by Presidential Orders to the Governors of Maharashtra and Gujarat and the Governor of Manipur, respectively. The Presidential Orders so far issued under these Articles state that the concerned Governors, while carrying out certain functions connected with the special responsibilities entrusted to them, may exercise their discretion. It has to be noted that these Articles themselves do not expressly provide for the exercise of discretion by the concerned Governors. Thus, these Presidential Orders are instances of a Governor being required to act in his discretion 'under' the Constitution where exigencies of a particular situation make it impractical for the Governor to seek or act on advice of the Council of Ministers.

Here are some examples typical exigencies for the Governor:

1. Where the advice of their Council of Ministers is not available, for eg., in the appointment of a Chief Minister soon after an election, or where the Council of Ministers has resigned or where it has been dismissed [Article 164(1)].
2. A Governor may have to act against the advice of the Council of Ministers, for eg., dismissal of a government following their refusal to resign on being defeated in the Legislative Assembly on a Vote of No-Confidence [Article 164(1) & (2)].
3. A Governor may have to make a report to the President under Article 356 that a situation has arisen in which the government of the state cannot be carried on in accordance with the provisions of the Constitution. Obviously, in such a situation they may have to act against the aid and advice of the Council of Ministers as the situation may be due to the various acts of omission or commission on the part of the Council of Ministers (Article 356).

The Governor must discharge her discretionary functions to the best of herjudgement and not at the dictation of any outside authority, unless such authority is authorized by or is under the Constitution to issue directions in that matter. An instance of such authorization is furnished by Article 371F(g) which makes the discharge by the Governor of Sikkim of some functions as special responsibility, subject to such directions as the President may issue.

If any directions are issued by the Union in the exercise of its executive power to the state Government under any provision of the Constitution, such as, Articles 256 and/or 257, it will be the duty of the Governor to keep the Union informed as to how such directions are being implemented by the state Government. It is pertinent to note that the office of the Governor is not a subordinate or a subservient agent of the Union Government, but an independent constitutional office. She is not accountable to the Union in the mode of performance of her obligations. The office of Governor is not an employment under the Union of India. However, she is accountable to the President in respect of those specified functions which the Constitution requires her to perform as an agent of the Union.

Constitution provides that the Governor shall hold office during the pleasure of the President(BP Singhal v. Union of India, 2010). However, the pleasure of the President cannot be questioned in the court of law and therefore the office of Governor is devoid of any security of term. In other words, the President can remove them from their office unilaterally at any time. Therefore, the current position of law permits the Centre to dismiss the Governor without any accountability. This allows for the exercise of arbitrary power by the Centre. It has been pointed out by Seervai that the Governor would run the chance of being sacked if she acts contrary to the policy of Union Ministry. There is a high probability in such a situation that Governor would follow the advice of Union Ministry. The removal of Governor under such circumstances indicates the effective control that the Union Government may exercise over the states. One can see that for the Governor, it is a very arduous task to act strictly according to the provisions of the Constitution and not obeying the politically motivated instructions of the ruling party at the Union.As a rectification measure,'the pleasure of President'could be made justiciable so that the sacked Governor can challenge the removal and contest improper removals.This could enable the Governor to properly discharge the duties and devote themselves to the service and wellbeing of the people of the state concerned, as stated in Article 159.

Office of the Governor from 2014 Onwards

The current dispensation is not the first government at the Centre to abuse the office of the Governor. Unfortunately, it has only furthered India's long tradition of abusing a loophole in the Constitutional design. Although the office of the Governor is considered as a ceremonial office, but the Governor performs some important political functions- the most important being the appointment of the leader of the party as Chief Minister whom she believes is most likely to secure the confidence of the House in case of a hung assembly.

The immense significance of this political rolecan be gauged by the fact that even the few days within which a new Chief Minister has to prove her majority in the assembly, are rife with attempts to coax, cajole, buy, or coerce the support of smaller parties, independents, and even factions within the main political rivals. The current government has dismissed nine governors since 2014. BJP-appointed Governors have typically obliged their political masters. In 2016, Governors of the states of Uttarakhand and Arunachal Pradesh – which were

ruled by parties that were in opposition at the Center – reported that the Constitutional machinery in these states had broken down, leading to the federal government dismissing the state governments and assuming direct rule (Tripathi:2016, ECON. TIMES: Mar.28). In both the cases, the Supreme Court of India had to interveneto restore the dismissed governments (Anand:2016: IE). In 2017, when the Goa assembly returned with a hung verdict, the Governor invited the alliance led by the BJP, which had superior numbers to the single largest party (the Congress). However, in 2018, the Karnataka Governor decided to invite the single-largest party lacking a majority (the BJP) rather than a coalition with a clear majority (that included the Congress) to form a government (Rajagopal:2018, The Hindu).It is clear that the decisions were motivated not by the likelihood of confidence but by bi-partisan considerations. The Supreme Court made a timely intervention by ordering an immediate floor-test in Karnataka (Sinha&Gopal:2018: Hindustan Times).Consequently, a coalition government was formed.In November 2018, when the non-BJP parties formed a coalition with a clear majority to form a government in the state of Jammu and Kashmir, the Governor simply dissolved the House and called for fresh elections, characterizing the alliance as “unholy” (Ehsan:2018: Hindustan Times:22 Nov).The Governor later hinted that by dissolving the assembly, he chose the lesser of the two evils and resisted pressure from the federal government to install a minority BJP government in the state instead (Masoodi & Ghosh:2018: NDTV: 28 Nov).Along with the abuses of the Governor’s office, BJP appointed lieutenant governors (LGs) – with a wider range of powers – have been unrelenting in the abuse of their office in the union territories of Delhi and Puducherry. In 2015, the AamAadmi Party formed government in National Capital Territory (NCT) of Delhi (Election Commission of India: 2015: 3878). Soon after the election, the federal government, acting through the LG, not only made key appointments contrary to the wishes of the Delhi cabinet, but also obstructed major policies and legislative initiatives of the elected government of Delhi (Saikumar:2015: Hindu:23 May).In part, these controversies are owed to Delhi’s peculiar status in the Indian Constitutional scheme. While it does have an elected parliamentary government, the powers of Delhi’s elected executive are somewhat less than those of full-fledged states. (Art. 239 AA). When the matter concerning the extent of the LG’s powers reached the Supreme Court, the Court interpreted the LG’s powers narrowly (State (NCT of Delhi) v. Union of India:2018: 284.18)holding that they cannot override a decision of the elected government of Delhi unless an ‘executive act of the government of the NCT is likely to impede or prejudice the exercise of the executive power of the Union government’.While the judicial caveat left enough ambiguity for the LG to continue with some meddling, (Nair:2018 INDIA TODAY :16July)even this limited relief came after the elected Delhi government had already completed more than three of its five years in office. While LGs, like Governors, are political appointees of the federal government, this level of interference by an LG is not conducive to the democratic soul of the Constitution (Ghosal: 2019: 14 Feb).Furthermore, in Puducherry, another territory with a peculiar Constitutional status, comparable to Delhi, the LG continued to interfere in policy decisions and day-to-day administration by the elected government until the intervention of the Madras High Court. (Lakshminarayanan v. Union of India: 2017-2019).

Conventions surrounding center-state relations have been breached by all governments led by any political party. One opposition-ruled state that has earned the particular ire of the federal government is Bengal, whose Chief Minister has been an outspoken critic of the current dispensation. In 2016, Union government was blamed of deploying the army in the state without the prior consent of the state government and without any obvious threat to national security (Ghosal: 2016: IE: 2Dec).In 2019, the central agency, Central Bureau of Investigation (CBI) moved to arrest the chief of the state police, again without the consent of the state government (Jha:2019: The Wire:6 Feb).

There have been considerable attempts to study the whole aspect pertaining to the office of the Governor and to rectify and reform the required provisions and political conventions which are dangerous to the federal Constitutional set-up. These committees and commissions have studied and recommended important changes and transformations in this regard. Some of them with their recommendations are:

Sarkaria Commission (1983):

A person to be appointed as a Governor should satisfy the following criteria:

1. They should be eminent in some walk of life.
2. They should be a person from outside the State.
3. They should be detached figure and not too intimately connected with the local politics of the State; and
4. Theyshould be a person who has not taken too great a part in politics in general and particularly in the recent past.

It recommended that in selecting a Governor in accordance with the above criteria, persons belonging to the minority groups should be given a chance as before(SarkariaCommission:1983: Ch.: IV). 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 a combination of other parties. (Sarkaria Commission: 1983: Ch.: IV). In order to ensure effective administration, consultation with the state Chief Minister in the selection of aGovernor should be prescribed in the Constitution itself by suitably amending Article 155 (Sarkaria Commission:1983: Ch.: IV). The Vice-President of India and the Speaker of the LokSabha may be informally consulted by the Prime Minister in selecting a Governor. It also recommended that the Governor's tenure of office of five years in a state should not be disturbed except very rarely and that too for some extremely compelling reasons. Save where the President is satisfied that it is 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 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. It is desirable that the President (in effect, the Union Council of Ministers) should get the explanation, if any, submitted by the Governor against her proposed removal from office examined by an Advisory Group consisting of the Vice-President of India and the Speaker of the LokSabha or a retired Chief Justice of India. After receiving the recommendation of this Group, the President may pass such orders in the case as she may deem fit (SarkariaCommission:1983: Ch.: IV). When, before expiry of five years, a Governor resigns or is appointed Governor in another State, the Union Government may lay a statement before both Houses of Parliament explain the circumstances leading to the ending of the tenure. Where a Governor has been given an opportunity to show cause against the premature termination of tenure, the statement may also include the explanation given by her in reply (Sarkaria Commission:1983: Ch.: IV). As a matter of convention, the Governor should not, on demitting office, be eligible for any other appointment or office of profit under the Union or a State Government except for a second term as Governor or election as Vice-President or President of India. Such a conventionalso requires that after quitting office, the Governor shall not return to active partisan politics. (Sarkaria Commission Report, Para 4.9.04)

In choosing a Chief Minister, the Governor should be guided by the following principles, viz.:

1. The party or combination of parties which commands the widest support in the Legislative Assembly should be called upon to form the government.
2. The Governor's task is to see that a government is formed and not to try to form a government which will pursue policies which they approve.
3. If there is a single party having an absolute majority in the Assembly, the leader of the party should automatically be asked to become the Chief Minister.

If there is no such party, the Governor should select a Chief Minister from the elected parties or groups of parties by considering themin the order of preference indicated below:

1. An alliance of parties that was formed prior to the elections.
2. The largest single party staking a claim to form the government with the support of others, including the independents.
3. A post-electoral coalition of parties, with all the partners in the coalition joining government.
4. A post-electoral alliance of parties, with some of the parties in the alliance forming a Government and the remaining parties, including independents supporting the government from outside.

The Governor while going through the process described above should select a leader who in her judgement, is most likely to command a majority in the Assembly.

4. A Chief Minister, unless she is the leader of a party which has absolute majority in the Assembly, should seek a Vote of Confidence in the Assembly within 30 days of taking over (Sarkaria Commission:1983: Ch.: IV).The Governor should not risk determining the issue of majority supporton her own outside the Assembly. The prudent course for her would be to cause the rival claims to be tested on the floor of the House (SarkariaCommission:1983: Ch.: IV). The Governor cannot dismiss the Council of Ministers so long as they continue to command a majority in the Legislative Assembly. Conversely, she is bound to dismiss them if they lose the majority but do not resign (Sarkaria Commission:1983: Ch.: IV).
5. If during the period when the Assembly remains prorogued, the Governor receives reliable evidence that the Council of Ministers has lost majority, she should not, as a matter of Constitutional propriety, dismiss the Council unless the Assembly has expressed on the floor of the House it's want of confidence. They should advise the Chief Minister to summon the Assembly as early as possible so that the majority may be tested.
6. Generally, it will be reasonable to allow the Chief Minister a period of 30 days for the summoning the Assembly unless there is very urgent business to be transacted like passing the Budget, in which case, a shorter period may be allowed. In special circumstances, the period may go up to 60 days (SarkariaCommission:1983: Ch.: IV). So long as the Council of Ministers enjoys the confidence of the Legislative Assembly, the advice of the Council of Ministers in regard to summoning and proroguing a House of the Legislature and in dissolving the Legislative Assembly, if such advice is not patently unconstitutional, should be deemed as binding on the Governor. (SarkariaCommission:1983: Ch.: IV)
7. The Governor may in the exigencies of certain situations, exercise her discretion to summon the Assembly only in order to ensure that the system of responsible government in the state works in accordance with the norms adopted in the Constitution.
8. When the Chief Minister decidedly fails to summon the Assembly within six months of its last sitting, or advises its summoning for a date falling beyond this period, the Governor can summon the Assembly within the period of six months as specified in Article 174(1).
9. If a notice of a no-confidence motion against a government is pending in a House of the Legislature and the motion represents a legitimate challenge from the Opposition but the Chief Minister advises that the House should be prorogued, the Governor should not straightaway accept the advice. She should advise the Chief

Minister to postpone the prorogation and face the motion (SarkariaCommission:1983: Ch.: IV).

10. If ultimately a viable government fails to emerge, the Governor should first consider dissolving the Assembly and arranging for fresh elections after consulting the leaders of the political parties concerned and the Chief Election Commissioner.
11. If the Assembly is to be dissolved and an election can be held early, the Governor should normally ask the outgoing Ministry to continue as a caretaker government. However, this step would not be proper if the outgoing Ministry has been responsible for serious mal-administration or corruption.
12. If the outgoing Ministry cannot be installed as a caretaker Government for any reason, the Governor, without dissolving the Assembly, should recommend President's rule in the State.
13. If fresh election cannot be held immediately on account of a national calamity or state-wide disturbance, it is not proper for the Governor to install a caretaker Government for a very long period.Sheshould recommend proclamation of President's rule under Article 356 without dissolving the Assembly.
14. If it is too early to hold fresh election, the Assembly not having run even half its normal duration of five years, the Governor should recommend President's rule under Article 356 without dissolving the Assembly (SarkariaCommission:1983: Ch.: IV).
15. The Governor has no discretionary power in the matter of nominations to the Legislative Council or to the Legislative Assembly. If at the time of making a nomination, a government has either not been formed or has resigned or lost majority in the Assembly, the Governor should await the formation of a new government (SarkariaCommission:1983: Ch.: IV).
16. Where a State University Act provides that the Governor, by virtue of this office, shall be the Chancellor of the University and confers powers and duties on her not as Governor of the State but as a Chancellor, there is no obligation on the Governor, in this capacity to alwaysact on ministerial advice under Article 163(1). However, there is an obvious advantage in the Governor consulting the Chief Minister or other Ministers concerned, but she would have to form her own individual judgement. In capacity as a Chancellor, the Governor may be required by the University's statutes to consult a Minister mentioned in the statute on specified matters, but it is not obligatory (SarkariaCommission:1983: Ch.: IV).
17. The Governor, while sending ad hoc or fortnightly reports to the President, should normally take her Chief Minister into confidence unless there are overriding reasons to the contrary. (SarkariaCommission: 1983: Ch.: IV).
18. When a Governor finds that it is constitutionally improper for her to accept the advice of her Council of Ministers, she should make every effort to persuade the Ministers to adopt the correct course. She should exercise her discretionary power only as the last resort.However, before taking a final decision in the exercise of his discretion; it is advisable that the Governor should, if feasible, consult her Ministers even in such matters, which relate essentially to the administration of a state. It would be neither feasible nor desirable to formulate a comprehensive set of guidelines for the exercise of the discretionary powers of the Governor. A Governor should be free to deal with a situation according to her best judgement, keeping in view the Constitutional arrangements. (SarkariaCommission:1983: Ch.: IV).

Punchhi Commission

The Commission (2007) gave 312 recommendations in its Report (2010). Some of the major recommendations are:

1. The report recommended that Articles 355 and 356 be amended to protect the interests of the states by trying to curb their misuse by the Centre. It said that the Centre should try to bring only the specific troubled areas under its jurisdiction and that too for not more than three months. The Commission sought to localize the Emergency provisions under Articles 355 and 356.
2. In case of appointment of state Chief Ministers, the Commission recommended thatthe Governor should consider these guidelines:

I. A pre-poll alliance to be regarded as one political party.

II. b) The order of precedence informing state governmentformation should be:

1. The group/alliance with the largest pre-poll alliance with the highest number.
2. The single largest party with support from others.
3. The post-poll alliance with a few parties joining the government.
4. The post-poll alliance with a few parties joining the government including independents giving outside support.

It recommended the ‘doctrine of pleasure’to beremoved from the Constitution. Only a resolution by the state legislature should remove the Governor. It also recommended that there should be a provision for the impeachment of the Governor by the state legislature. Itsupported the right of the Governor to sanction the prosecution of ministers against the state government’s advice.

Administrative Reforms Commissions

The Administrative Reforms Commission (ARC) studied numerous aspects of Union-State relations. The Study Team of ARC observed that the “office of the Governor is not meant to be an ornamental sinecure”. It stated that ‘it is very important for the Governor to clearly understand their area of responsibility and powers. It is equally important that the Governor should discharge her functions judiciously, impartially and efficiently’.

It’s Report (1969), observed that the Governor as the head of the state should command the respect of all parties in thestate because of their impartiality and sense of fair-play.

The Commissionobserved that if the provisions of Article 200 are given a very wide interpretation, it would lead to a large number of bills being reserved for the consideration of the President and it would be contrary to the federal spirit of the Constitution. They also pointed out that this Article must be interpreted as enabling Presidential intervention only in special circumstances, such as those in which there is a clear violation of fundamental rights or a patent unconstitutionality on some other ground or where the legitimate interests of another state or its people are affected. It further observed that this Article also provides an opportunity for Presidential intervention in the event of a clash with a Union law. It also recommended that the report of the Governor regarding the President's Rule should be objective.

Some other Commisions like the Rajamannar Committee (1971) recommended the deletion of Articles 356 and 357 from the constitution of India. The necessary provisions for safeguards against arbitrary action of the ruling party at the Centre under Article 356 should be incorporated in the Constitution. It emphasized that the Governor of the state should not consider herself as an agent of the Centre but play her role as the Constitutional head of the state.

Justice V. Chelliah Commission (2002) recommended that Article 356 must be used sparingly and only as a remedy of the last resort after exhausting all actions under Articles 256, 257 and 355**.**

Views of the Supreme Court

In S.R. Bommai vs. the Union of India case (1994**),** following the Sarkaria Commission's recommendations, the Supreme Court underlined that the breakdown of constitutional machinery implied a virtual impossibility, and not a mere difficulty, in carrying out governance in a state. This landmark judgment effectively cautioned against the frequent use of Article 356 for removing state governments run by opposition parties. It drastically reduced the imposing of President's Rule from 63 times during 1971-1990 to 27 times between 1991 and 2010. But there is no certainty that similar judgments would follow on other controversial issues in future. The Supreme Court said that while the subjective satisfaction of the President regarding such a breakdown was beyond judicial scrutiny, the material on which such satisfaction was based could certainly be analyzed by the judiciary, including the Governor's report. The Supreme Court classified the instances of failure of constitutional machinery into four heads- political crises, internal subversion, physical breakdown, and non-compliance with Constitutional directions of the Union Executive, under which Emergency provisions were applicable.

In NabamRebia judgement (2016) the Supreme Court ruled that the exercise of Governor's discretion Article 163 is limited and their choice of action should not be arbitrary or fanciful. It must be a choice dictated by reason, actuated by good faith, and tempered by caution.

Conclusion

Constitutionally, and in an academic reading, Governor's most important duty is to serve the Constitution and the people of the state.While doing so, she acts as a defender of the Constitution who ensures that the state is being run in accordance with the Constitution. In this way, she acts as a representative of the Union. But this representation must not be reduced to a passive follower of what the Center says. However, one cannot overlook the reality that the Governor becomes more of a dubious functionary in a pathetic state of affairs. The power of President to remove the Governor at her pleasure makes political motivations very much attached to the post.One can see that there are certain loopholes in the provisions of the Constitution to which is owed the responsibility for such an embarrassing position of the Governor. This forces one to believe that the achievement of federalism in India remains more of a thought than a reality.

In the current political climate, examples of Goa (2017), Meghalaya (2018), Manipur (2017) and Karnataka (2018), point out the need to ensure proper checks and balances for the proper functioning of this office. In order to enable the Governor to successfully discharge her functions under the Constitution, an agreed 'Code of Conduct' approved by the state governments, the Central government, the Parliament, and the state legislatures could be framed.It could lay down certain norms and principles which could guide the exercise of the Governor's 'discretion'. The procedure for appointment of Governors should be clearly laid down**,** preferably with a fixed term so that a Damocles' sword is not always hanging above them. It is necessary to invest the office of the Governor with the requisite independence of action and to rid them of the bane of 'instructions' from the Central Government. The Bommai (1994) verdict allowed the Supreme Court to investigate claims of malafideabuse in the Governor's report, a similar extension to include malafideintent in the process of inviting party members to form government could be a potential solution. The role of Governor is indispensable for the successful working of our constitutional democracy. It is very important to note that the office of the Governor is also an agent of unity and integrity of India.The person in this office should be a person imbued with values of honesty, impartiality, and integrity. It is rightly expected from them that they should be above personal, political, financial, and material motivations while discharging their duties, under oath to 'preserve, protect and defend the Constitution and the law'.

References

1. *Chandra, Vipin, India's Struggle for Independence, Penguin Books India Pvt. Ltd, Gurgaon, 1989, pg167-170*

2. *Report of the Sarkaria Commission, GoI, Delhi, 1983, chapter-iv, pg5-6*
3. *Nehru, Jawaharlal, Constituent Assembly Debates, Delhi, 1 June 1949*
4. *Bhargava, Thakur Das, Constituent Assembly Debate, Delhi, 1 June 1949*
5. *Gazette of India, Delhi, 23 April 1949*
6. *Unnikrishnan, Rahul, Governors in Indian States: A Colonial Imprint, livemint.com, 25 March 2017*
7. *The Constitution of India, Central Law Publication, Prayagraj, 2021, pg116-122*
8. *Report of the SarkariaCommission,1983, GoI, New Delhi, chapter-v, para 4.6.17*
9. *Singhal, BP v. Union of India, (2010) 6 SCC 331.*
10. *Tripathi, Rahul, President's Rule Imposed in UttarakhandAfter Governor's Report, ECON. TIMES (Mar.28, 2016).*
11. *Anand, Utkarsh, Lessons from Uttarakhand and Arunachal: What Court Orders on Central Rule Say, INDIAN EXPRESS (July 15, 2016),*
12. *Singh , HartoshBal, India's Embattled Democracy, N.Y. TIMES (May 30, 2018)*
13. *Rajagopal, Krishnadas, Legal Experts Divided Over Karnataka Governor's Invitation to Yeddyurappa to Form Government, HINDU (May 16, 2018)*
14. *On the Modi government's impact on political federalism, see Chanchal Kumar Sharma &WilfriedSwenden, Modi-fying Indian Federalism? Center-State Relations under Modi's Tenure as Prime Minister, 1 IND. POL. &POL'Y 51 (2018).*
15. *For a possible impact of the Modi government's tax policy on fiscal federalism, see SuhrithParthasarathy, Taxing Times for the States, The Hindu (July 25, 2017).*
16. *Sinha, Bhadra&Gopal, Vikram, Supreme Court Orders BJP's Yedurappa to Face Floor Test in 24 h, Hindustan Times (May 18, 2018).*
17. *Karnataka Governor Invites Congress-JDS Alliance to Form Government, Hindustan Times (May 19, 2018)*
18. *Ehsan, Mir, Jammu and Kashmir's Political Thriller Ends In Anti-Climax, Assembly Dissolved, Hindustan Times (Nov. 22, 2018).*
19. *Masoodi, Nazir & Ghosh, Deepshikha, J&K Governor Talks "Threat of Transfer" After Controversy, Over Remarks, NDTV (Nov. 28, 2018)*
20. *Election Commission of India, Statistical Report on General Election, 2015, to the Legislative Assembly of NCT of Delhi, ttps://eci.gov.in/files/file/3878-delhi-2015/.*
21. *Saikumar, Rajgopal, More Constitutional Than Political, HINDU (May 23, 2015).*
22. *Delhi LG Anil Baijal Blocking Scheme for Education Loan to Poor, Alleges Manish Sisodia, Ind. Express (Sept. 22, 2017).*
23. *The Constitution of India, Article 239AA(4) amended by The Constitution (69th Amendment) Act, 1991.*
24. *State (NCT of Delhi) v. Union of India (2018) 8 SCC 501, [284.18] (Misra J).*
25. *Harish V Nair, Delhi CM vs L-G: Round 2 Begins in SC Tomorrow, INDIA TODAY (July 16, 2018).*
26. *Delhi GovtVs LG: "GovtParalysed, Can't Appoint/Transfer Officers, Submits Delhi Govt. but SC Defers Hearing of Pending Issues, LIVELAW (Jul 26, 2018)*
27. *Ghosal, Aniruddha, Delhi Deadlock: How it Was under Sheila Dikshit and What Changed after ArvindKejriwal Came to Power, NEWS18 (Feb. 14, 2019).*
28. *K. Lakshminarayanan v. Union of India, W.P. 28890 of 2017 (2019)*
29. *See also MeghaKaveri, Win for Puducherry CM, Madras HC Rules LG Cannot Interfere in Govt's Daily Affairs, NEWS MINUTE (Apr. 30, 2019)*
30. *See also, CM vs LG: Puducherry Power Struggle May Now Become a Legal Tussle, NEWS MINUTE (July 2, 2017)*
31. *See also, Rajesh Nair, SC Verdict Relevant to Puducherry Too, Chief Minister Narayanasamy, HINDU (July 4, 2018).*
32. *See also, Puducherry Power Tussle: Here's L-G KiranBedi's Counter to CM Narayanasamy's Contempt Threat, FINANCIAL EXPRESS (July 5, 2018)*
33. *Ghosal, Aniruddha, Mamata Banerjee Compares Situation in Bengal to 'Military Coup', INDIAN EXPRESS (Dec. 2, 2016).*
34. *Jha, Proem Shankar Jha, We Are Witnessing the Death of the CBI. Will Indian Democracy Follow?, WIRE (Feb. 06, 2019).*
35. *AniruddhaGhosal, 'There was a Plan': How Mamata'sOffencive Escalated to Catch ModiGovt Off Guard, NEWS18 (Feb. 04, 2019)*
36. *Report of the Sarkariacommission:1983: ch-IV, Para 4.6.09*
37. *Report of the Sarkariacommission:1983: ch-IV, (Para 4.6.19)*
38. *Report of the Sarkariacommission:1983: ch-IV, (Para 4.6.25)*
39. *Report of the Sarkariacommission:1983: ch-IV, (Para 4.7.08)*
40. *Report of the Sarkariacommission:1983: ch-IV, (Para 4.8.08)*
41. *Report of the Sarkariacommission:1983: ch-IV, (Para 4.8.09)*
42. *Report of the Sarkariacommission:1983: ch-IV, (Para 4.10.02)*
43. *Report of the Sarkariacommission:1983: ch-IV, (Paras 4.11.03 to 4.11.06)*
44. *Report of the Sarkariacommission:1983: ch-IV, (Para 4.11.07)*
45. *Report of the Sarkariacommission:1983: ch-IV, (Para 4.11.09)*
46. *Report of the Sarkariacommission:1983: ch-IV, (Paras 4.11.10, 4.11.11 and 4.11.13)*
47. *Report of the Sarkariacommission:1983: ch-IV, (Para 4.11.17)*
48. *Report of the Sarkariacommission:1983: ch-IV, (Paras 4.11.19 and 4.11.20)*
49. *Report of the Sarkariacommission:1983: ch-IV, (Para 4.11.22)*
50. *Report of the Sarkariacommission:1983: ch-IV, (Paras 4.11.25 to 4.11.30)*
51. *Report of the Sarkariacommission:1983: ch-IV, 4.16.12, 4.16.13 and 4.16.15 (c).*
52. *Report of the Sarkariacommission:1983: ch-IV, (Para 4.11.31)*
53. *Report of the Sarkariacommission:1983: ch-IV, (Paras 4.11.37 to 4.11.39)*
54. *Report of the Sarkariacommission:1983: ch-IV, (Para 4.12.06)*
55. *Report of the Sarkariacommission:1983: ch-IV, (Para 4.13.03)*
56. *Report of the Sarkariacommission:1983: ch-IV, (Para 4.13.04)*