

CHAPTER - IX

GOVERNOR AS CONNETING LINK BETWEEN THE CENTER AND THE STATES

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9.1 HISTORICAL BACKGROUND

The present day Governor is a legal survivor who has contrived to remain a political necessity. Our political system is a result of blending of both unitary and federal system according to the requirements of time and circumstances. It is this unique feature that has made the office of the Governor a political necessity in a Parliamentary form of government. The framers of the Indian Constitution, inspired by the Anglo-Saxon Constitutional model, had envisaged the Parliamentary setUttar Pradesh for the States as well. In this setUttar Pradesh, the institution of Governor occUttar Pradeshies an important place. It was sUttar Pradeshposed to be an important link between the Union and the States, especially with a view to have the intact unity and integrity of the nation.

Article 153 of our Constitution provides that each State shall have a Governor. An amendment of 1956 makes it possible to appoint the same person as the Governor of two or more States. Article 155 says that the Governor is appointed by the President and holds office during the pleasure of the President even though he is ostensibly appointed for a fixed term of five years (Article 156). As the Governor

holds office during the pleasure of the President means he can be removed and transferred by the President.

9.2 MODE OF APPOINTMENT

Article 155, 156(1), 156(3), 157 lays down the rules of appointment of the Governor. According to Article 155, “ the Governor of a State shall be appointed by the President by warrant under his hand and seal.” It was actually meant that the men of public life having a sound integrity and national repute would be appointed on this post.

Present method of appointment was adopted due to the fear that there might be a conflict and even a dead lock between a popularly elected Governor and the Chief Minister representing the majority party in the Legislature. Even other methods of choosing the Governor such as an indirect election by an electoral college consisting of members of State Legislatures, M.P.s from the States, or the election of a panel of names from among whom the President should make choice were put forward and discussed in the Constituent Assembly. However, at the final stage, all these proposals were dropped and the proposal for the nomination by the President was accepted by the Assembly. Framers of the Constitution were influenced by the Canadian model in this matter.

A study of the debates in the Constituent Assembly show that the Governor is expected to be a person who would inspire respect in the minds of all for his wisdom, integrity, impartiality and service to the people of the State to which he has been appointed. Also, he would have no interest in party politics except to keep himself informed for proper discharge of his Constitutional functions. All this calls for an extremely cautious choice of the incumbent of this important Constitutional office. A Governor can be appointed from any part of India. A tacit convention has been established that a Governor should not belong to the State to which he is appointed. This convention has been generally observed by the Central Government, except on a few

occasions just as the ruler of Mysore, Sardar Ujjail Singh in Punjab and Shri H.C. Mukherji and Padmaja Naidu in West Bengal on the instance of CHIEF MINISTER. Further Constituent Assembly hoped that “a convention of consulting the State Cabinet” would easily be grown Uttar Pradesh as it has in Canada and Australia. But this convention became a cause of tension between the Union and the State. The Union Government failed to observe the convention strictly in the appointment of the Governors.

There are many examples which evidently display that the Chief Minister of the non-Congress Government were not consulted prior to the announcement of the appointment of the Governors in their respective States. For instance, former then Chief Minister of UTTAR PRADESH was not consulted when the announcement of the name of Dr. B.Gopala Reddy as the Governor was declared. Shri Nityananda Kanungo was appointed as the Governor of Bihar even after the objection of the then Chief Minister of the State, Shri M.P. Sinha who wanted an extension of the then Governor Shri A.Ayyanger Uttar Pradesh to March, 1968. The United front Government of West Bengal headed by Ajoy mukherjee was also not consulted in 1969, mid term election, when Union Government appointed Mr. S.S. Dhawan as the Governor of the State. Further it is still uncertain whether “consultation” is simply mean consultation or the approval of the State Ministry concerned.

Practically, the ruling party at the Center, enjoys its prerogative to appoint its men of taste and confidence for this office. During the period of Pandit Nehru, the Union Government took care of appointing the persons of high caliber in public life but after the fourth General Elections the office of the Governor has almost become a ‘price-post’ for the ruling party. The Janata Party also obliged its men of confidence by awarding the post of Governorship

to those politicians to whom it could not accommodate either in the party organization or in the Governmental wing.

The trend of offering this august office to the defeated or retired politicians has reduced the dignity of the office. Such Governors after their appointment, continued their connections with the active politics; and in some cases returned to active politics after ceasing to be the Governors. Since 1972 onward Mohan Lal Sukhadia of Rajasthan, R.D.Bahandari, Mr. Jogendra Singh, Mr. M.M. Choudhary and Dr. M. Chenna Reddy were obliged to accept this high office in order to keep them away from the current politics of the internal party politics. But soon the elections of the Sixth Lok Sabha were declared in 1977, they resigned from the Governorship to contest the Parliamentary elections as the candidate of the Congress Party. This trend appears to be inconstant with the spirit of the constitution undemocratic, unhealthy and injurious to the interest of the nation.

According to N.K. Trikha,¹ "in the choice of Governors, all norms are violated. People notorious for their partisanship have been sent as Governor with the apparent mandate to destabilize Governments run by the opposition parties. People who had been rejected by the electorate at the hustings were made Governors. People who had to resign from Government following strictures by the judiciary or on being found guilty of serious misdemeanor by inquiry Commissions were made Governors. And people who had to be rewarded for their personal loyalty to the party leadership were made Governors. There have been people who alternated between Governorship and Chief Ministership or Contra Ministership. There have been cases in which caste has been the clinching factor in appointing someone as a Governor."

¹ Choice of Governors- N.K. Trikha, The Indian Express, April 24, 1995.

A survey made by the Sarkaria Commission has shown that from 1947 to 1984 more than 60% of the Governors had taken active part in politics, many of them immediately prior to their appointment.²

The Administrative Reform Commission's study team on Center-State relations (1967) had rightly laid stress on the need to make a systematic and careful search to locate the best men for it.

9.3 DOCTRINE OF PRESIDENT'S PLEASURE AND REMOVAL GOVERNORS.

It has now been a settled fact that though the Governor's office has a fixed tenure, he can be removed from his office any time because he holds office during the pleasure of the President which means on advice given by the Prime Minister. This means that the party in power in the Union has effective control over the appointment and removal of Governors.

As the Governor holds office during the pleasure of the President, there is no security of his tenure. He can be removed by the President, at his discretion. In 1977, after the Emergency, Janata Government because they were the appointees of the Prime Indira Gandhi. When she returned to power in 1980 she acted in the same manner ousting the Governors appointed by the Janata Government **Two crucial questions arise** : Whether, regardless of the nature of the appointments and appointees, the incumbent Governors should be to follow the convention of handing in their resignations following a change in Government

And the second: Whether it was proper for the President in the present instance to withdraw his pleasure at one go and at the prompting of the Government from all Governors, in the absence of proven default or misconduct on their part? Here the right to withdraw the Presidential pleasure is not in dispute, but only the

² State Governors in India- Trends & Issues- N.S. Gehlot

manner of and the reason for doing it.³ It was said that the independence should be given for the Governor.

9.4. CONSTITUTIONAL STATUS OF THE GOVERNOR

The Governor is the head of the State much in the same way as the President is of the Union. He is the executive head of the State; he exercises his powers either directly or through officers subordinate to him in accordance with the Constitution. The Governor is the Constitutional Head of a State as well as a Constitutional link between the Center and the States. He also functions as the agent of the Union Government with the power to report to the President about the breakdown of the Constitutional machinery of the State. But at the same time there are some provisions in the Constitution which specifically provide that the Governor is to exercise his powers and functions independently of his Council of Ministers.

The dual role of Governor as the Constitutional Head of a State as well as a link between the Center and the States became a bone of contention. In past, the appointment of the Governor has been subject of much controversy as Governors have been unashamedly appointed in total disregard of these norms with the incumbents of some Raj Bhavans in the country functioning more as agents of the ruling party at the Center rather than as guardians of federal democracy. It has undoubtedly emerged as one of the key issues in Union-State relations. The controversial role of the Governors in the different States governed by the non-Congress parties left no way out for the opposition leaders except to demand that the office of the Governor should be abolished.

Some Governors played a role of a **“Link”** between the High Command of the Party and the local units of the party in States. Such allegations were leveled against Mr. Uma Shankar Dikshit, the Governor of Karnataka, He played a vital role in allocating the

³ Would Governors change with Govts?-C. Subramaniam, Indian Express, 24-1-98.

Congress Party tickets to the candidates for the Lok Sabha elections in 1977. The Governorship during 1967-76 as such had been centralized to serve the purpose of the party in power. In 1974, Dr. M.Chenna Reddy was appointed as the Governor of the UTTAR PRADESH to watch the loyalty of the State Chief Minister., Mr. H.N.Bahuguna.

The way the Janata Government acted was no more different from that of the Congress. Mr. Morarji Desai appointed ten Governors in different States at its will. When the Congress (I) captured power in January 1980, by and large the attitude of the Central remained the same.

What is the real status of a Governor as visualized by the founding fathers was explained by a Constitution Bench in **Hargovind Pant v Dr. Raghukul Tilak**. As per this judgment, the Governor is not under the control of the Government of India. His office is not subordinate or subservient to the Government of India. He is not amenable to the directions of the Government of India nor is he accountable to them for the manner in which he carried out his functions and duties. He is an independent Constitutional office which is not subject to the control of the Government of India.

Despite this being the real Constitutional position, the country has seen Governors who have preferred for personal gain to be servile to the Central Government. Before taking important decisions on matters entrusted to them by the Constitution, they would rush to Delhi and try to know the views of the Central Government first and then act accordingly. Let it be Stated that unfortunately the number of such Governors is on increase which has even lowered the status of the institution of Governorship itself. We have even known of Union Home Minister not being consulted while appointing Governor which

is indeed shocking in as much as it is the Home Ministry, which is basically concerned with the appointments etc. of Governors.

The Governors have acted more as **agents of the Center, particularly the party in power at Center. They are compelled** to dance accordingly to the Center's tune. It implies that the Governor's has been uncertain and that they can be hired and fired at will by the Center. Besides, there can be no denying the fact that many of them misused their powers just to please their masters in Delhi in order to win back a position at Center.

Thus, some of Governors abandoned the role of an impartial referee. They became tools in the hands of the party in power at Center. This has been done by them by using their powers of appointment and dismissal of Chief Ministers, summoning, proroguing and dissolving the Assemblies, recommending President's rule and giving or withholding assent to Bills, etc.

9.5 Powers of the Governor

Under the Constitution, the Governor is bound by the advice of his Chief Minister (Article 163), but there are certain areas where the Governor may act on his own discretion.

In **Edwingson V. State of Assam** (AIR 1966 Assam and Nagaland),(1) J.Nayudu of the Gauhati High Court distinguished between the Governor and the Government and clearly held and argued in a minority judgement that the Governor had three kinds of powers:

1. Those to be exercised at his discretion,
2. Those to be exercised on his 'own initiative without reference to the Council of Ministers',
3. Those to be exercised on the advice of Ministers.

The majority in the Supreme Court disagreed with him on appeal but J. Hidayatulla supported his point of view in his dissenting judgment and said that "the Governor must be expected to act independently

and not with advice with ministers”⁴. In a most interesting case of *Sardarilal V Union of India*. A distinction was made, following *Jayantilal Amritlal Shodhan V. F. N. Rana*⁵ between the executive power of the President and the powers of the Union of India and it was held that there are a number of power of the President which under the Constitution cannot be delegated. The judgment goes on to say that these powers must be exercised only when the President or Governor is ‘Personally satisfied’ on the material placed before him about the various matters on which action has to be taken.

These areas of Governor’s discretion are broadly identified as follows in various submissions made to the Sarkaria Commission:⁶

- (a) choosing the Chief Minister,
- (b) in requiring the chief Minister to prove his majority on the floor of the House.
- (c) Dismissing Chief Ministers
- (d) Dissolving the legislatures
- (e) Recommending President’s rule
- (f) Reserving bills for the consideration of the President, and
- (g) Making nominations to the Uttar Pradesh per Houses of the States (where there is a bicameral legislature).

1. One of the most important Constitutional powers of the Governor is to **appoint a Chief Minister**. Soon after an election when a single party or a coalition emerges as the largest single party or groUttar Pradesh, there is no difficulty in the selection and appointment of a Chief Minister. However, where no single party or groUttar Pradesh, commands absolute majority, the Governor has to exercise his discretion in the selection of the Chief Minister. If the developments of the three decades are analyzed, it will be found that in the appointment of the Chief Ministers, two contradictory principles have

⁴ (AIR 1971 Supreme Court 1547)

⁵ (1964(50 SCR 294)

⁶ Sarkaria Commiission Report headed by J.Sarkaria, 1977.

been followed, namely the principle of non-assessment and the principle of assessment.

According to the first principle, when none of the political parties has an absolute majority in the Assembly, the Governor should invite the leader of the largest party to form a Council of Ministers. This was followed in Madras, Pepsu, Travancore-Cochin in 1952, Orissa in 1957 and Rajasthan in 1967, Pondicherry in 1974, Haryana in 1982. However, this method was not followed in the case of Andhra Pradesh (1954). Even though the Communist Party was the largest party, its leader was not called Uttar Pradesh on to form the Government.

Governors have employed various ways to determine which party or group is likely to command a majority in the Legislative Assembly. Some have relied only on lists of supporters of rival claimants produced before them, as in Bihar(1968) when the Congress Party was called Uttar Pradesh on to form a Government. In some cases, physical verification by counting heads was carried out, as in the case of Gujarat(1971) when the leader of the newly formed Congress(C) Party was called Uttar Pradesh on to form the Government. Similarly in Uttar Pradesh(1967), the leader of the Congress Party was appointed Chief Minister after the Governor had physically counted his supporters. In the case of Rajasthan(1967), physical verification was resorted to and the leader of the Congress Party was called Uttar Pradesh on to form the Government, but in determining the relative strength of the Congress Party and Samyukta Dal, the independents were ignored. If they had been taken into account, the result might have been different. It implies that some of the Governors while making assessment counted the independents also while others ignored them without much justification. In 1967 Dr. Sampurnanand, the Governor of Rajasthan, refused to count the independents because they were in the Non-Congress camp but Biswanath Das, his counterpart in U.P. counted them because they were with the Congress Party and with their help Congress Ministry was installed in office. Various Governors have adopted different approaches in similar

situation in regard to dissolution of the Legislative Assembly keeping in view the interests of the ruling party at the Center. Whenever the ruling party at the Center felt that it would be in a position to form alternative Ministry either by maneuvering or otherwise, the Assemblies were suspended, otherwise they were dissolved. For example the Assemblies were suspended in Rajasthan in 1967, in U.P. in 1970, in Orissa in 1971, in Assam in 1979, in order to give the Congress Party a chance to form the government. But on the other hand Assemblies were dissolved in Andhra Pradesh in 1954 in Kerala in 1965, in 1970 and again 1982, in Manipur in 1969, in Tripura and West Bengal in 1971 and in Orissa in 1973, in Assam in 1982 in order to prevent the opposition to form the Government when the Congress Ministries or the Ministries supported by it went out of office. More than a needle of suspicion has been directed to the Governors using their powers to interfere with the political governance of States. In at least one case of 1962, the Governor of West Bengal sacked his Chief Minister, an action that was Uttar Pradesh held by the Calcutta High Court in 1969. The Chief Minister of Uttar Pradesh was similarly dealt with in 1995. The Chief Minister of Andhra, the famous film actor-politician, N T Rama Rao protested in 1995 that he was dislodged from power by the Governor of his State. This is only one aspect of the enormous powers possessed by Governors.

One interesting example can be taken from a recent situation in Tamilnadu State, where the party leader of AIADMK, Jaylalitha could not contest for election as her nomination was cancelled, but her party won the elections and Governor took decision to appoint her as Chief Minister inspite of being barred by the Election Commission to contest the election. New guidelines and conventions should be developed for Governors to handle these type of Constitutional crises that are taking place now . Our forefathers would never had been anticipated these kinds of circumstances.

In a number of situations of political instability in the States, the Governors **recommended President's rule under Article 356 in a partisan manner**. On tracing the history of Governors in post-Independence era, we find that over 40 years, Governors have recommended the death of democratic federalism in 59 out of 77 occasions when President's rule has been imposed to deny fully elected governments the right to governance, because they were alleged not to be able to cope with law and order (Kerala 1959; Punjab 1971; Manipur 1973; Nagaland 1976; Gujarat 1976). Chief Ministers also conspired in demanding President's Rule rather than deal with the problem(U.P. 1973; Gujarat 1974; Manipur 1979). The President's rule was also imposed to give the Congress Party time to reorganize their political fortunes or perpetrate crisis(U.P. 1975; Orissa 1976; Andhra 1973; Sikkim 1984 and Nagaland 1988) whilst opposition parties were not allowed to form a government even when they had a right to do so(Andhra 1954; Travancore-Cochin 1956; Kerala 1965; Rajasthan 1967; U.P. 1968; West Bengal 1970; Orissa 1971 and 1973; Kerala 1979; Manipur 1981; J.&K. 1984) or continue in Office (Pepsu 1953).

Governors have dismissed Chief Ministers when the matter should have been decided by the respective legislatures (West Bengal 1967; U.P. 1970), and enthroned aspirants when they should not have been(J.&K. 1984; Sikkim 1984; Andhra 1984). They have dissolved assemblies when convenient to the party in power at the Center(Kerala 1970; Punjab 1971), but refused Chief Ministers the right to appeal to the electorate for a renewed mandate(Punjab 1967; U.P. 1968; M.P. 1969 and Orissa 1971). This was not just a malady of the sixties. It continues, Ram Lal's political highhandedness in dismissing Ram Rao in 1984, Taleyar Khan's machinations in Sikkim in 1984, and Jagmohan's action in engineering Farooq Abdullah's downfall in 1984 are not just examples of perverse judgment but also

how the popular will eventually reasserted its sovereignty over caprice.

The story is not limited to instances of the President's Rule. Even after the bills have been passed, **Governors under article 200** have allowed themselves a considerable latitude to temporarily or some times, in effect, permanently affect a veto to be exercised by the Center. The Constitution does not furnish any guidance to the Governor –in which manner he should accord his assent and in which matter he should hold assent. “Article 200 does not fix any time limit for granting the assent”. It has been held in **Purushottam V. State of Kerala**⁷. It has been held by the Supreme Court in **Hoechst Pharmaceuticals V. State of Bihar**⁸ that the Governor’s power to reserve a Bill for the consideration of the President cannot be questioned in Court. The power to withhold the assent appears to be wide and unguided power. In **Shamsher singh V. State of Punjab**⁹, it was held that these powers are to be exercised by the Governor on the advice of his Council of Ministers and not in accordance with the instructions received by him from the Government of India. As per **Sarkaria Commission** Report, between 1977 and 1985, some 1130 bills were reserved for the Center, who withheld assent in 31 cases. The President is known to linger over these bills. He took twelve years to refuse consent to the Trade Unions Bill passed by West Bengal Legislature in 1969; eight years for rejecting essential commodities Bill of Karnataka passed in 1976; six years for assenting to civil service bill passed by the same State in 1979.

The **use of discretion by Governors** in the nomination of members to the Legislative Council has been criticized. According to Sarkaria Commission Report, the first case of exercise of discretion in regard to such nomination arose as early as in 1952, in Madras, when C.

⁷ (AIR 1962 SC 694)

⁸ (1983 SC 1019)

⁹ (AIR 1974 SC 2192)

Rajagopalachari was nominated to the Legislative Council and was then appointed Chief Minister. The action has been criticised on the ground that the Governor has no discretion in such matters.

The use of discretion by Governor, in nominating members of a University Council or University functionary, in his capacity as Chancellor of a university in the State, has also come in for criticism. In several State Universities, the concerned legislations specifically provide that the Governor, by virtue of his office, shall be the Chancellor or Head of the University and by these legislations certain powers have been conferred on him as the Chancellor. Governors have exercised their powers as Chancellor under the statute and not as Governor. Actions of the Governors have again been questioned on the premise that they have to abide by the advice of the Council of Ministers even in such cases. In 1988, the State Committee of the ruling Left Democratic Front(LDF) in Kerala alleged that the State Governor Ram Dulari Sinha has misused her powers as Chancellor of the University by nominating people of her choice to Senates, disregarding the panels submitted by the Government.

This shows that the Governors have not rightly used their discretion. A close scrutiny of all the exercise of the Governor's power in the past would reveal one common thread running through them. The actions may vary and the decisions may differ but the discretion of Governors is inextricably wound Uttar Pradesh with overall political thinking and attitude of the ruling party at the Center towards other party Governments in States. Because of this, recently, the controversy regarding this institution cropped Uttar Pradesh in Nagaland, Andhra Pradesh, Kerala, and Bihar. But it took a turn while the Kerala's Legislative Assembly passed a resolution and criticised the role of Governor. The six non-Congress(I) Chief Ministers are against the Governors appointed by the Center, as expressed in Calcutta conference, is understandable considering the highly partisan role some of them are playing. This led to a journalist to comment, "Nothing has disfigured the face of Indian federalism so irreparably

and dismally as the office of the Governor." It is a matter of fact that if the viability of provincial Government is going to be protected, much more drastic measures will have to be taken.

Some areas of discretion, relating to the imposition of President's rule, reserving bills for the consideration of the President and Governor dismissing his Chief Minister for political consideration have been discussed earlier. Here it is enough to recall that in many instances a party or parties different from the one in power at the Union which should have been called to form a government were not so-called. Unfortunately, these areas of discretion are controlled by conventions which do not necessarily have a binding effect on the Governor. It has been argued that the courts should lay down the law in respect of how the discretion of the Governor is to be exercised. This has been done to some extent in the **President's Rule Case (1993)**⁹ decided by the Suttar Pradeshreme Court. However, many aspects of the exercise of the discretion remain unclear. It is not surprising that in May-June 1996, the President of India was not sure about the conventions about the selection of a Prime Minister at the Center resulting in the thirteen-day ministry of the Bharatiya Janata Party followed by a coalition ministry headed by H.D. Deve Gouda who was still not a member of Parliament.

9.6 ROLE OF THE GOVERNOR OF A STATE

The role of Governor has come in severe criticism. In fact the office of the Governor acquired new dimension in the era of coalition politics after 1967 which warranted the Governors to exercise their 'inherent political discretion', or it may be called as 'the situational discretion'. The role perception of our Governors became strategically importance in times of political and Constitutional crisis. These types of events established a theory of 'implied discretionary powers' of the State Governors on the basis of Article 163. Nevertheless, this discretion is quite different from the Constitutional discretion as the 'representative of the Union' as specified under Article 200, 365.,.356,

371(1) and in the parts 5(2) and 18(2) of the sixth Schedule of the Constitution. It may be worthwhile to recall that the role-perception of the State Governor developed in the wake of the emergence of multi-party competitive system after 1967, resulting in to the internal rifts and defection in our political parties and forming the regional base parties to grab the power.

Thus, these two roles are deemed to be independent of each other and contradictory to our polity. The Governor is the first Constitutional head and a "Link" role arises only when the State is without the elected Ministry or where it is under President rule.

It may be argued that many conventions which define the manner and content of the Governor's discretion do not apply in an all-or-nothing fashion, and that each exercise must necessarily depend on the facts and circumstances of the case. The fact that a norm has to be applied to the facts in issue is generally true for any application of the Constitution and the law and may be more true of political situations which are more fluid and dramatic in their intensity and public importance. At the same time, it is not impossible to lay down specific rules and the general principles. To some extent this was done in the Government of India Act of 1935 in the form of Instrument of Instructions to the Governor. This idea of an Instrument of Instructions was also mooted for India's present Constitution when it was being drafted in 1947 -50. Ironically, the reason for abandoning was that Governors, endowed with good sense, would ensure that they act in a proper fair and principled manner thereby obviating the need for laying down principles to define, contain and discipline their discretion. While the Administrative Reforms Commission (1966-69) noted the problems created by the Governor's discretion, more focused attention was given to it by Bhagwan Sahav's *Report of the Committee of Governors (1971)* which opined that the principles governing the exercise of discretion must be made by leaving matters to the good sense of Governors.

What has been happening in fact all these years is that Governors generally act according to the instructions of the Home Ministry at the Center. If the party/or group of parties in power at the Center is a different from the one in the State (whose Legislature has passed the particular Bill) and more particularly where the party in power at the Center is in opposition in the State Legislature and had opposed the said Bill, or for any other reason, the Home Ministry may instruct the Governor either to withhold his assent or reserve it for the consideration of the President – or return the Bill in case the party position in the Legislature has, in the meanwhile, undergone a change. If any such instructions are received by the Governor, most likely, he would act according to them, notwithstanding the advice of his Council of Ministers to the contrary. This is clearly an undemocratic exercise of power by the Governor. To wit, the Governor is a part of the State Legislature and the Council of Ministers is to advise him in the matter of exercise of his powers. The people or the Legislature have no remedy against any arbitrary withholding of assent, inordinate delay in granting assent or unwarranted and unjustified reservation of a Bill for the consideration of the President. Whenever the Governor acts according to the instructions of the Central Government and contrary to the advice tendered by the Council of Ministers of the State, friction arises between the Center and the State which is not conducive to a fruitful cooperation between them. The Legislature can't even impeach the Governor since there is no such provision in the Constitution. May be the power to withhold assent is understandable in the case of the President (Article 111) who is elected by the Members of the Parliament and the State Legislatures and can therefore claim a certain amount of legitimacy but not in the case of the Governor who is a mere appointee.

The Kerala Chief Minister E.K. Nayanar recently demanded abolition of the post of the Governor. He called for this since" the institution of

the Governor is not only redundant but also harmful for democratic Center-State relation". But this is no solution of the problem. The institution of the Governor has to remain if the existing form of Parliamentary Government continues. Such demand is not new. And different committees and Commissions have been formed to consider all these kind of problems. Few important ones are mentioned below:

9.7.1 RECOMMENDATIONS OF ADMINISTRATIVE REFORMS COMMITTEE (1967)

Administrative Reforms Commission Study Team on Central State Relationships (1967) had emphasized the need for the formulation of a national policy to which the Union and States subscribed, which gave recognition to the role of the Governor and guided the responses of the Union, the States and the Opposition parties to any actions taken in discharge of it. The Commission opined that such a national policy should spell out the implications of the Governor's role in the form of conventions and practices, keeping in view the national objectives of defending the Constitution and the protection of democracy. The Commission referred to the fact that the Administrative Reforms Commission had also recommended in 1969 that the Inter State Council should formulate the guidelines governing the discretionary powers by the Governors and that after their acceptance by the Union Government such guidelines should be issued in the name of the President. The Government of India, however, did not accept this recommendation saying that the matter should best be left to the conventions which may be established or which may be evolved in that behalf.

9.7.2 Recommendations of Sarkaria Commission: (1987-88)

The Commission in their report submitted in the year 1987-88, in which Commission have dealt with the "Role of the Governor" in Chapter IV and "Reservation of Bills by Governors for President's Consideration, and Promulgation of Ordinances" in Chapter V.

The Commission suggested that his office is of vital importance having multi-faceted role, that Governor is linchpin of Constitutional apparatus, that Governor's office assures continuity of Government and that it should not be dispensed with. The Commission proceeded to discuss the manner of selection of Governors, the term of their office, their eligibility for further offices after the expiry of their term and the retirement benefits available to them. The Commission then discussed the areas in which the Governor has to act in his discretion and the need for such discretionary powers.

The Commission took note of the criticism with respect to the role of the Governor and also set out the matters in which the Governor has to act in his discretion. The matters in which the Governor, according to the Commission, is expected to use his discretion are:-

- (i) In Choosing the Chief Minister
- (ii) In testing majority of the government in office
- (iii) In the matter of dismissal of a Chief Minister
- (iv) In dissolving the Legislative Assembly
- (v) In recommending President's rule
- (vi) In reserving Bills for President's Consideration.

The Commission also discussed the guidelines for the Governors. The Commission observed that these should be evolved in course of time embodying accepted conventions. The Sarkaria Commission concluded that it is not possible to lay down any guidelines governing the functions and duties of the Governors, partly because it is not possible to foresee all the situations which may develop calling for the exercise of discretion by the Governor. Still how ever if some guide line by the Commission and if accepted in form of some legislation by the Parliament. Now, coming to the recommendations of the Sarkaria Commission in regard to the institution of Governor, they are briefly the following:-

The person to be appointed as a Governor –

- (i) should be an eminent person;
- (ii) must be a person from outside the State;
- (iii) must not have participated in active politics at least for some time before his appointment;
- (iv) he should be a detached person and not too intimately connected with the local politics of the State;
- (v) he should be appointed in consultation with the Chief Minister of the State, Vice-President of India and the Speaker of the Lok Sabha;
- (vi) His tenure of office must be guaranteed and should not be disturbed except for extremely compelling reasons and if any action is to be taken against him he must be given a reasonable opportunity for showing cause against the grounds on which he is sought to be removed. In case of such termination or resignation by the Governor, the Government should lay before both the Houses of Parliament a Statement explaining the circumstances leading to such removal or resignation, as the case may be;
- (vii) After demitting his office, the person appointed as Governor should not 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, as the case may be; and
- (viii) At the end of his tenure, reasonable post-retirement benefits should be provided.

Sarkaria Commission further recommended that in choosing a Chief Minister, the Governor should be guided by the following principles, viz.:

- (i) The party or combination of parties which commands the widest support in the Legislative Assembly should be called upon to form the government.
- (ii) The Governor's task is to see that a government is formed and not to try to form a government which pursues policies which he approves.
- (iii) 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.
- (iv) If there is no such party, the Governor should select a Chief Minister from among the following parties or groups of parties by sounding them, in turn, in the order of preference indicated below:

- (i) an alliance of parties that was formed prior to the Elections.
- (ii) the largest single party staking a claim to form the government with the support of others, including 'independents'.
- (iii) a post-electoral coalition of parties, with all the partners in the coalition joining the government.
- (iv) 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.
- (v) The Governor while going through the process described above should select a leader who in his (Governor's) judgment is most likely to command a majority in the Assembly.

It was also recommended that a Chief Minister, unless he 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. This practice should be religiously adhered to with the sanctity of a rule of law.

The other recommendations made by the Sarkaria Commission are that the issue of majority support should be allowed/directed to be tested only on the floor of the House and nowhere else and that in the matter of summoning and proroguing the Legislative Assembly, he must normally go by the advice of Council of Ministers but where a no confidence motion is moved and the Chief Minister advises proroguing the Assembly, he should not accept it straightaway and advise him to face the House.

The Report also recommended certain measures in the matter of dissolution of the Assembly. The Report recommended that while sending *ad hoc* or fortnightly reports to the President, the Governor should normally take his Chief Minister into confidence, unless there are overriding reasons to the contrary. The discretionary power of the Governor as provided in Article 163, it was recommended, should be left untouched

The Commission opined that amendment of Articles 200 and 201 is not called for. The Commission examined the scope of Governor's discretion under Article 200 (in the matter of granting or withholding assent and in the matter of reserving the Bills for the consideration of the President) and then pointed out the provisions of the Constitution where under reservation for President's consideration is obligatory Uttar Pradeshon the Governor viz., (i) second proviso to Article 200; (ii) Clause (2) of Article 288; (iii) Clause (4)(a)(ii) of Article 360 and (iv) Article 360 (4)(a)(ii). The Commission also pointed out the matters in which the Bills may be reserved for the President's consideration and assent for specific purposes. They are:

- (i) To secure immunity from the operation of Articles 14 and 19, namely, Bills for acquisition of eStates, etc and for giving effect to Directive Principles of State Policy (Proviso to Article 31C).

- (ii) a Bill relating to the subjects enumerated in the Concurrent List, to ensure operation of its provisions despite their repugnancy to a Union law or existing law, by securing President's assent in terms of Article 254(2).
- (iii) Legislation imposing restrictions on trade and commerce requiring Presidential sanction under the proviso to Article 304 (b) read with Article 255.

The Commission pointed out specifically that the above situations do not exhaust the situations in which the Bill may be reserved for the consideration of the President that there may be other matters as well in which the Governor may in his discretion think it proper to reserve a Bill for the consideration of the President.

In the matter of granting or withholding his assent or in the matter of reserving a Bill for the consideration of the President, the Governor must act according to the advice tendered by his Council of Ministers except in rare and exceptional cases, example, where the provisions of the Bill are patently unconstitutional or are beyond the legislative competence of the State Legislature or where they derogate from the scheme and framework of the Constitution so as to endanger the sovereignty, unity and integrity of the nation or where they clearly violate Fundamental Rights or other Constitutional limitations. **A convention must be established where under the President should dispose of a Bill sent to him for his consideration within four months.** The Commission, however, recommended that the Constitution itself should not prescribe any time limit either for the Governor or the President and that the matter should be allowed to be governed by conventions and good sense of the relevant persons.

9.7.3 NCRWC RECOMMENDATIONS¹⁰

The Commission respectfully agree with all the recommendations contained in Chapter IV (relating to Governors) in the Sarkaria Commission Report subject to the following:

We agree that Article 155 of the Constitution requires to be amended. We, however, think that the experience gained over the last 14 years since the Sarkaria Commission Report may call for a more specific amendment in Article 155. It would be appropriate to suggest a committee comprising the Prime Minister of India, the Home Minister of India, the Speaker of the Lok Sabha and the Chief Minister of the State concerned to select a Governor. (This committee may also include the Vice President of India if it is thought appropriate.) Instead of 'confidential and informal consultations', it is better that the process of selection is transparent and unambiguous.

Another suggestion which we wish to make in this behalf is to provide that where a pre-election coalition enters the general-elections' fray as such, it should be treated as one political party/grouping and if one such coalition /grouping obtains a majority, the leader of such coalition/grouping (elected or indicated, as the case may be) shall be called to form the Ministry. So far as post-electoral coalition of parties is concerned, the recommendations made by the Sarkaria Commission are quite appropriate.

We are of the opinion that the practice of sending "*ad hoc* or fortnightly reports to the President" is not a healthy one, except where the Governor feels that consistent with his oath and in the interest of the people of the State, a report should be made to the President as contemplated by and within the meaning of Article 356 of the Constitution. Wherever he is honestly satisfied that a situation has arisen where it is not possible to carry on the government of the

¹⁰ NCRWC Report. Chairman M. N. Venkat Chailai, March -31, 2002

State in accordance with the provisions of the Constitution (as in the latest decision in *S.R. Bommai v. Union of India*¹¹, he should make a report to the President. Such a report should not be made either because he has been instructed by the Central Government to do so or for any other reason.

Accordingly, it is recommended that Articles 155 and 156 of the Constitution be amended to provide for the following: -

- (a) the appointment of the Governor should be entrusted to a committee comprising the Prime Minister of India, Union Minister for Home Affairs, the Speaker of the Lok Sabha and the Chief Minister of the concerned State. (Of course, the composition of the committee is a matter of detail which can always be settled once the principal idea is accepted);
- (b) the term of office, viz., five years, should be made a fixed tenure;
- (c) the provision that the Governor holds office "during the pleasure of the President" be deleted;
- (d) provision be made for the impeachment of the Governor by the State Legislature on the same lines as the impeachment of the President by the Parliament. (The procedure for impeachment of the President is set out in Article 61.) Of course, where there is no Upper House of Legislature in any State, appropriate changes may have to be made in the proposed Article since Article 61 is premised on the existence of two Houses of Parliament; and
- (e) In the matter of selection, the matters mentioned in the Sarkaria Commission Report should be kept in mind.

As we have mentioned hereinbefore, the Governor is not elected by the people of the State nor by their representatives. He is merely a nominee of the Central Government and even if Article 155 is

¹¹ (AIR 1994 SC 1918)

amended as recommended in the preceding paragraph, even then he remains and continues to be a nominee. We have already pointed out hereinbefore that the legitimacy which attaches to the President (because the President is elected by the representatives of the People in the Center and the States) does not attach to the Governor. Hence the legitimacy of the Governor to participate in the governance of the State is very much suspect except perhaps in matters mentioned in the Fifth and Sixth Schedules to the Constitution. This comment and approach apply equally to his powers under Article 200. We have hereinbefore pointed out the main features of Articles 200 and 201. We are of the opinion that Articles 200 and 201 be amended to provide for the following matters:

- (a) prescribe a time-limit - say a period of four months - within which the Governor should take a decision whether to grant assent or to reserve it for the consideration of the President;
- (b) delete the words "or that he withholds assent therefrom". In other words, the power to withhold assent, conferred Uttar Pradesh on the Governor, by Article 200 should be done away with;
- (c) if the Bill is reserved for the consideration of the President, there should be a time-limit, say of three months, within which the President should take a decision whether to accord his assent or to direct the Governor to return it to the State Legislature or to seek the opinion of the SUPREME COURT regarding the Constitutionality of the Act under Article 143 (as it happened in the case of Kerala Education Bill in 1958);
- (d) when the State Legislature reconsiders and passes the Bill (with or without amendments) after it is returned by the Governor pursuant to the direction of the President, the President should be bound to grant his assent;

- (e) to provide that a “Money Bill” cannot be reserved by the Governor for the consideration of the President;
- (f) or perhaps it may be more advisable to delete altogether the words in Article 200 empowering the Governor to reserve a Bill for the consideration of the President except in the case contemplated by the second proviso to Article 200 and in cases where the Constitution requires him to do so. Such a course would not only strengthen the federal principle but would also do away with the anomalous situation, where under a Bill passed by the State Legislature can be ‘killed’ by the Union Council of Ministers by advising the President to withhold his assent thereto or just by ‘cold-storaging it.

9.8 CRITICAL APPRASAL

All these recommendations are very good and practical. It is generally acceptable that only good and impartial Governors should be appointed. Usually ex-service persons or former judges or politicians are appointed. By and large, gubernatorial office has been a haven for politicians and politically included bureaucrats. The appointment of retired judges has been criticised on the ground that post-retiral appointments compromise the independence of the judiciary. The Constitution makers had toyed with the idea of elected Governors, but this was abandoned on the ground that elected Governors may not only politicise their office but also set themselves Uttar Pradesh in opposition to their chief ministers whose advice they are bound to follow. The answer may well lie in ensuring that the appointments and removal are vetted by a collegiate to ensure appointee’s political impartiality and Statesmanship. Equally, the premature removal of Governors should also be accountable to the collegiate. But good appointments do not necessarily obviate the need for guidelines and authoritative Statements of principles to guide the discretion of the Governor.

It is obvious that instead of a Governor being imposed on a State by the Center, we should adopt the system of elected Governors confining the contest to the permanent residents of that State who have not been associated with any political party. Such a person would undoubtedly look to the interest of the State while discharging his functions. In that case Governor should cease to be removable by the Center.

As the power of removal is being exercised on the ground that the Governor holds his office till the pleasure of the President and Article 310 of the Constitution does not require any reasons to be recorded before withdrawing the pleasure, let it be Stated that no power can be used for *male fide* purpose. Ulterior or alien purpose clearly speaks of misuse of the power. It is well settled in law that power conferred on an authority cannot be exercised on his whim or caprice, but must be informed by reason and logic in *Calcutta Discount Co. v ITO*.¹²

Reference may also be made to what was Stated by Bhagwati, J. in *Maneka Gandhi v Union of India*,¹³ wherein it was pointed out that every action of the executive Government must be informed with reason and must be free from arbitrariness, and any unreasonable order would be violative of Article 14. Now, if fundamental right of a person is violated, recourse to court of law is permitted. It has been held in several decisions of the Supreme Court, to wit,¹⁴ that Article 310 is controlled by fundamental rights.¹⁵

In view of the aforesaid high principles of public law, it seems what has been Stated by Seervai in this regard that when a holder of office

¹² AIR 1961 SC372: (1961)41ITR 191.

¹³ AIR 1978 SC 597: (1978)1 SCC 248@1978)2 SCR 621: (1978)2 SCJ 312.

¹⁴ *Union of India v More* AIR 1962 SC 630; *State of Orissa v Dhirenderanath* AIR 1961 SC 1715; *Kapur Singh v Union of India* (1960)2 SCR 569: AIR 1960 SC 493; *Jagannath v State of U.P.* AIR 1961 SC 1245; *Kameshwar v State of Bihar* AIR 1962 SC 1166: (1962)2 SCR (Uttar Pradesh) 369 and *Ghosh v Joseph* AIR 1963 SC812.

¹⁵ See D. Basu's *Shorter Constitution of India*, 10th Ed.,.

during pleasure is dismissed “his remedy is not by way of a law suit but by appeal of an official or political kind. Where there is a representative government, the legislatures may, if they think fit, make themselves mouthpiece of that sort of grievance as against the Crown as of any other”¹⁶ does not State the correct position of law so far as our Constitutional perspective is concerned. Let a Governor, to whom self-respect is dear, approach a court of law against his dismissal if, according to him, the same was for collateral purpose i.e. by exercising power *male fide* or even unreasonably. A transfer order can also be challenged on these grounds.

These guidelines are not authoritative and after seeing Sarkaria Commission’s recommendation’s continuing breach there is no high hope for reform. There are two alternatives. The first is that we can switch over to the President System that will automatically lay down authoritative guidelines under Article 160 of the Constitution which reads as follows :

The President may make such provision as he thinks fit for the discharge of the functions of the Governor of a State in any contingency. Even these guidelines may not be immune from review and may be criticised on the basis that, while the President’s advice may be welcome, the discretion of the Governor cannot be abdicated to the directions of the President. Even so, the President may consider issuing such general instructions.

Second the Supreme Court may lay down the principles and rules to be followed in the more obvious cases. At present, the position is unsatisfactory because in many matters, the political situation changes before the Supreme Court can rule on the matter and the cause or the matter becomes in fructuous. It may become necessary for the President to refer this question in a suitably worded request to

¹⁶ Seervai” *Constitutional Law of India*, 3rd Ed., vol II

the Supreme Court so that these principles come to be settled under the advisory jurisdiction of the Supreme Court (Article 143).