

Controversy Surrounding the Post of Governor in the Indian Parliamentary Democracy

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ABSTRACT

The Controversy Surrounding the post of Governors resurfaced once again with the election of a government with clear majority at the Centre in 2014 after two and a half decades of relative calm in the politics surrounding the role of governors after the fall of Congress in the late 1980s. The rampant transfers and removals of Governors came as no surprise to the nation as we had already seen the same in the decade of 1960, 1970s and 1980s. The election of strong governments with clear majority at Centre has always threatened the federal structure of the country that the Indian constitution envisages. In the recent times we came across news/allegations of misuse of power by Governors in the states of Madhya Pradesh, Kerala, West Bengal and Maharashtra. This has led to a fresh but not new debate surrounding the role of Governors in the Indian Parliamentary Democracy.

Aim: Through this paper I try to find the constitutional validity of the powers of Governor and the provisions of the constitution that allow the use/misuse of these powers.

Method: For the purpose of this paper I shall use court judgements, Newspaper articles that appeared over time and papers by other researchers. For the purpose of this paper I shall use both primary and secondary sources.

Key Words : Controversy, Power of Government, Indian Parliamentary democracy

INTRODUCTION

The post of Governor of Indian states appointed vide article 153 under the hand and seal of the President of India vide article 155 of the Indian constitution has been undoubtedly the most debated political and administrative entity of the country. Over time it has been argued that governors are administrative heads of the states and not political persons as they are not elected via popular elections but appointed. The Constitution doesn't clearly specify the role of Governors but rather draws a blurry line in and around what they can do while conferring them discretionary powers equivalent to or actually more than the President of India, in the regions administered by them. As pointed out by Chattopadhyay "Constitutional provisions envisage a variety of models such as a dignified

head of the State, a real executive, and an agent of the Union functioning pre-eminently at its behest."¹ The not so clearly envisaged functions of the Governor in Indian Constitution and the fact that they are appointed by warrant under the hand and seal of the President of India, which effectively means by the cabinet of ministers and that they hold office during the pleasure of the President vide article 156(1) makes the post of governors highly controversial and susceptible to allegiance to the centre, sometimes contrary to the oath administered to them vide article 159 of the Indian Constitution. Some newspapers have gone as far saying that the Governor is supposed to dance to the tune of Presidents which effectively means to the tunes of the central government.² The constitution specifies no specific rules for the removal of Governor unlike the President, Vice President and Judges of

1. The office of the Governor in the Indian Federal Setup, Chapter IX, by Sibransan Chattopadhyay
2. Governor: Serving at the President's Pleasure, The Statesman, 30 May 2019, Kolkata

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Supreme Court except that she/he holds the office during the pleasure of the president.

For more than 2 decades after independence the country had a single party government i.e. congress was in government at the central and states level and hence differences, if any arose, were settled in a very cordial way at party meetings. But the situation changed after the 4th general elections in 1967 and in a number of states governments of differing/rival parties were made. In these situations more often than not the central governments have tried to dictate their terms through the Governor who exercises some discretionary powers in appointment of Chief Ministers in case of a hung assembly, in advising the President in declaring emergency and Reserving a bill for the assent of the president, for which no time period is specified. When Governors use these discretionary powers friction arises in states and governors and in states and Centre relationships. As the Sarkaria commission report reads:

“A major change occurred after the Fourth General Elections in 1967. In a number of States, the party in power was different from that in the Union. The subsequent decades saw the fragmentation of political parties and emergence of new regional parties. Frequent, sometimes unpredictable realignments of political parties and groups took place for the purpose of forming governments. These developments gave rise to chronic instability in several State Governments. As a consequence, the Governors were called upon to exercise their discretionary powers more frequently. The manner in which they exercised these functions has had a direct impact on Union-State relations. Points of friction between the Union and the States began to multiply.”³

Under these circumstances there were many opportunities for exercising the constitutional powers which inevitably led to a controversy about the role of the Governor who on some occasions came to be looked upon as “chief instrument of Centre’s alleged conspiracy to topple the non-Congress ministries in the States.

The indiscriminate use of power by centre in appointment, removal and transfer of governors and consequently governors being forced to use discretionary powers; the image of governors as political agents of the

Centre became very vivid and nothing until date has dented/changed this perception of people. As Rakhahari Chatterji notes “The negative image of the state governors as above all ‘an agent of the centre’ has proved difficult to erase.”⁴ This is the primary reason, the states have rebuked the role of Governor as the administrative heads of states and the discretionary powers of the Governor. Under those circumstances it was envisaged for the Governors to have a more defined constitutional role. Some researchers have gone as far as saying that the governor’s role despite what the constitution envisages or the constitutional experts interpret from time to time is mainly dependent on the centre-state/ intergovernmental relationships at any point of time and it’s only when the centre and state governments are not in tandem with each other that the role of Governor actually becomes important/comes to lime light through various controversies as states begin to see them not as administrative but nominal heads but agents of the Centre with powers to hinder their policy progresses by reserving bills for ascent of President.

The Recent Controversies:

These controversies surrounding the role of Governors in India’s federal setup that actually gives way for a unitary setup resurfaced after the election of a popular government in Centre with clear majority to a single political party *i.e.* the Bharatiya Janta Party (BJP) in 2014. With this the relatively calmer period in the course of this controversy from 1990-2014 came to an end and new controversies surfaced leading to various constitutional experts, political scientists and researchers coming up with differed opinions. At some instances matters were dragged into courts where courts tried to interpret the constitutional provisions in these regards.

Since the BJP has formed a government at the Centre, we have seen Governors doing their bit in furthering the agenda of the party/Centre by use of their position as the executive/administrative heads of the governments as well as by use of their discretionary powers. We saw it in Uttar Pradesh when the Governor Mr. Ram Naik sat on the election of 5 members to the state legislative council by the Samajwadi Party(SP) and

3. Chapter iv, Role of the Governor, Sarkaria Commission 1988 report. <http://interstatecouncil.nic.in/wp-content/uploads/2015/06/CHAPTERIV.pdf>
4. Recurring controversy about Governor’s role in state politics : Rakhahari Chatterji. <https://www.orfonline.org/expert-speak/recurring-controversy-governor-role-state-politics-67433/>

recommendation of President's rule in Arunachal Pradesh in vide article 356 which was accepted/implemented at the advice of the Central Government by President Mukherjee in February 2016. What is notable here that the incumbent congress government of the state was not even given a chance to go for the mandatory floor test. We saw the Maharashtra Governor administering oath to Devendra Fadnavis and Ajit Pawar for the post of Chief Minister and Deputy Chief Minister respectively at 5 am in the morning on no substantial grounds without a confirmed letter of support from MLAs. A similar controversy surfaced when opposition parties in Jammu and Kashmir (then a state) Governor to form government. He became unapproachable on the pretext that the fax machine at the Rajbhawan was not working.

A question that arises when we look at the above instances is 'Why do the Governors, in whose name the executive actions of the state are to be administered, act in a way that probably embarrasses them and the highly revered constitutional post it is?' 'Why do Governors choose to toe the line of the central government when the oath administered to her/him needs them to be a guardian of the people of the state and defender of the constitution?' A probable answer that we can easily comprehend is the mode of appointment and ease of removal of the Governors. The uncertainty of tenure of the governor's office that allows her/him to hold office during the pleasure of president that empirically translates to the pleasure of council of ministers at centre on whose aid and advice the President is bound to act vide article 74 of the Indian Constitution and constitutional amendment act 42. Recently we saw a very clear case of Governor acting as a tool of the central government when the legislative assembly of Kerala tried to pass an anti-Constitutional Amendment Act (CAA) resolution in December 2019. The Governor of Kerala Arif Mohammad Khan tried to block the legislation by saying that it was unconstitutional despite the fact that in the assembly of 140 only 1 vote had been cast against the resolution and both ruling and opposition party had supported it. The Governor who is supposed to be the defender of the constitution, with his rights to convene a sitting of the house or reserve the bill for the ascent of the President, chose to speak out in public despite the

fact that the CAA bill introduced by the central government was being vehemently opposed by some sections of the society and had caused polarisation throughout the country.

Today we see that more often than not Governors are politically aligned and toe the ideological lines of one party or another while the Sarkaria commission report clearly envisaged that Governors should not be political activists at least for some time preceding their appointment, we today have governors who act as political activists and their offices has been marred with controversy. Recently Tathagat Roy, the Governor of Meghalaya has been in news for his controversial remarks toeing the line of the Rashtriya Swaymsevaka Sangh (RSS), the ideological outfit of which the BJP is the political outfit. In light of a number of comments and tweets from the Governor an online media house noted "And we have an educated chauvinist and a seemingly urbane communalist, who is able to eloquently articulate the RSS' deepest, darkest antipathies to the secular nature of the Constitution."⁵ In another case we saw that the former Uttar Pradesh Governor enrolled as a member of the BJP on 31st of July 2019 after retiring from the office of Governor on 22nd of July 2019. Though he clarified that he will not contest any election but he also went on to say that he will work as common party worker for the BJP and flagged off BJP's Maharashtra election campaign held last year. We can see that because of lack of stated qualifications for appointment as governor and lack of direction for Governors in their actions in the constitution we have come across these circumstances that are rather embarrassing for a person who holds such high a constitutional post.

In Delhi and Pudhucheery, two union territories that are administered by Lieutenant Governors by authority assigned in the name of the President we have come across similar or even more pronounced confrontation between the elected governments and appointed lieutenant Governors. In Delhi the confrontations were dragged to courts on a range of matters including the appointment of Bureaucrats to the top offices of the Government to the Governors remark that he didn't need to consult the council of ministers before taking decisions. The Courts have given some respite to the elected government by making it necessary for the Governor to

5. Tathagat Roy is India's First Toxic Twitter Governor, The Print, 23 February 2019 <https://theprint.in/opinion/tathagata-roy-is-indias-first-toxic-twitter-governor/196964/>

consult the council of ministers and stating that the Lieutenant Governor is bound to act on the aid and advice of council of Ministers. In the long legal battle that followed this contention some respite was announced for the elected government by the Supreme Court decision. “Chief Justice of India (CJI) Dipak Misra, who wrote the opinion for himself, and Justices A.K. Sikri and A.M. Khanwilkar held that except for issues of public order, police and land, the Lieutenant Governor is bound by the “aid and advice of the Kejriwal government, which has the public mandate.” Read a newspaper report.⁶ We came across similar tussle in between the Governor and elected government of Puducherry where the elected government alleged that the incumbent administrator Kiran Bedi was interfering with day to day affairs of the government. In its judgement the Madras High Court bench refuted that the lieutenant Governors held any more powers than the governors of other states and reemphasised the Supreme Court’s decision in the Delhi LG vs state of Delhi case that the LG was bound to act on aid and advise of council ministers in all cases unlike Delhi where the land, police and public order are under the direct control of president and hence the powers are to be exercised by the LG in his name.

The effects of the tussle:

The Governor and Government tussle that roughly translates to the tussle between flexing powers of the central government and more constitutional powers of the state government are not merely political. This has associated costs in terms of halted development projects, reduced administrative efficiency and judicial costs. In the case of Puducherry the tussle between the incumbent LG and the elected government went so far that the opposition (AIADMK) had to step in to state that the confrontation between the two was derailing development projects.⁷ In Delhi and Uttar Pradesh the appointment to top bureaucratic offices were contended by the Governor and elected governments that delayed posting

to such offices leading to delay and inefficiency in handling administrative issues including public order lapses. A country that is marred by slowness of judicial system and has over 3.5⁸ crore cases pending for long periods of time, these confrontations in the court could be avoided via dialogue and coordination.

The way forward:

An important observation made by constitutional expert Subhash C Kashyap to be noted in this context is that Governors definitely are agents of the union but they should not be agents of the central government. The fine line so envisaged was marred in 1967 when the ruling congress party went on to rampantly disregard elected state governments via appointing its loyalists as governors to exercise power via them in states. This went to become the standardised empirical practise against what the constituent assembly had envisaged. One of the reasons the constituent assembly chose to have unelected governors as it felt that elected governors would lead to a tussle of power but unfortunately, the result of taking the another road has not been very different.

The Sarkaria Commission in its report submitted in 1989 made significant recommendation regarding the appointment of governors but because of vested interests of the governments in centre the recommendation were never adopted in practice except for appointment of persons of another state as governors as this was also politically viable. The recommendation included:

- a) an eminent person in some walk of life,
- (b) a person not belonging to the same state,
- (c) a detached figure and not too intimately concerned with the local politics of the state, and
- (d) a person who has not largely taken part in politics.

The committee further recommended that “a politician from the ruling party at the Union is not appointed as the Governor of a state run by some other party or a combination of other parties.”⁹ The Commission also recommended that persons retiring

6. Lieutenant Governor Bound by ‘aid and advice’ of elected Delhi govt., rules Supreme Court, The Hindu, 04 July 2018.

7. Confrontation Between LG, Govt Derailing Development Work In Puducherry: AIADMK, 24 September 2017. Outlook magazine. <https://www.outlookindia.com/website/story/confrontation-between-lg-govt-derailing-development-work-in-puducherry-aiadmk/302162>

8. Over 3.5 Crore Cases Pending Across Courts in India, Little Change in Numbers Since 2014. 27 November 2019. The Wire. <https://thewire.in/law/pending-court-cases>

9. Recommendations Of various Commission on Centre-State relations. https://shodhganga.inflibnet.ac.in/bitstream/10603/86844/13/13_chapter%205.pdf.

from the post of Governor should not return to active/partisan politics. The recommendations were hardly paid any heed to. Today more than ever before, we need to legislate the Sarkaria Commission's recommendations on the appointment of Governors. The ease of removal of Governor must be done away with and a formal procedure should be followed in the removal of a person from such high office instead of the pleasure of the President. Sarkaria Commission recommended that the Governor's office should only be disturbed during the 5 years tenure under extreme circumstances. The commission recommendations be followed in word and in spirit, so that the office of Governor can discharge its duties as a protector of the constitution in contrast with what they have been legally coerced into doing. As the Supreme Court advised that Governors should act in coordination with the elected governments and not under their discretion, we hope that points of contention shall be resolved through dialogue in future.

Conclusion:

In light of the relatively recent cases we studied in the chapter, it is evident that the office of the Governor has been crippled due to the mode of appointment and ease of removal and hence it has not been able to perform the role the constitution and the constituent assembly envisaged for them. Security of tenure for Governors is a must, or they were be de facto bound to act as agents of the central government. Further only constitutional provisions are not enough to stop the misuse of power. On the contrary what is required is will of the governments in the centre and moral powers of the Governors as well as state governments to stop this appropriation of powers, though legally but unscrupulously. We have an example in form of Jyoti Basu's resentment to congress loyalist governors in 1960s. let's hope that Governors stop being tools of centre in the centre state contention with states having a say in the appointment of Governors.
