

# THE ROLE OF GOVERNORS IN MAINTAINING INDIA'S FEDERAL STRUCTURE

Written by *Dr. Rakesh Chandra*

*Academician, Former Civil Servant, LL.M. from B.B A. (Central) University, Lucknow, Ph.D.  
in Law from Lucknow University, India*

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## ABSTRACT

Chapter II (Article 153-163) of the Constitution of India deals with the appointment and powers of the Governors. Even a cursory reading of these constitutional provisions clearly indicates that they can only exercise powers that are granted to them by the Constitution or a law made under it. In *Shamsher Singh vs. State of Punjab, 1974*, the seven-judge Bench of the Apex Court held that the governor must exercise his powers only upon and in accordance with the aid and advice of the ministers, save in a few well-known exceptional situations. In the Constituent Assembly in June 1949, Dr. B.R. Ambedkar specifically stated that the governor under the Constitution has no functions which he can discharge by himself. No functions at all. At the same time, he has certain duties to perform. However, it has been frequently observed that the unwanted tussle between the governor and the elected government with the chief minister at its head is taking place on various pretexts. This phenomenon is more visible in the Opposition-run States. In the recent past, such acrimonious incidents took place in the States of Punjab, Tamil Nadu, West Bengal, Maharashtra, Kerala etc. because of the governor's transgressing their Constitutional limits. This has a direct bearing on the Centre-State relations and the federal structure of the country. This paper delves into different aspects of the problem, its ramifications upon the federal structure of the country, and also tries to suggest the possible solutions.

**Keywords:** Centre-State Relations, Governor, Federal Structure, Constitution of India, Executive Head.

## INTRODUCTION

The role of governor is very crucial in maintaining federal structure envisaged by the Indian Constitution. The provision of this constitutional post was also contained in the Government of India Act, 1935. During the Constituent Assembly debates, the architect of India's Constitution, Dr. B.R.Ambedkar has referred to the Governor's position as "ornamental", calling his powers "limited" and "normal". In one of his famous speeches in the Constituent Assembly, he said the Governor has no functions that he can discharge by himself and that he has only certain duties to perform.<sup>i</sup> Later, the Sarkaria Commission described the governor as "a Constitutional sentinel and a vital link between the Union and the State."<sup>iii</sup> Further elaborating upon the role of governors, Dr. B.R.Ambedkar said, "He is the representative not of a party; he is the representative of the people as a whole of the State. It is in the name of the people that he carries on the administration."<sup>iii</sup> The Supreme Court of India in *S.R.Bomma vs Union of India* (1994) has also said, "The office of the Governor ... is intended to ensure protection and sustenance of the constitutional process of the working of the Constitution by the elected executive." M.K.Gandhi opined about the Governor's office, "He would be an arbiter when there was a Constitutional deadlock in the State and he would be able to play an impartial role."<sup>iv</sup> In the case of *Hargovind Pant vs Raghukul Tilak* (1979), the Supreme Court affirmed that the "office of the Governor was not subordinate or subservient to the Government of India. "

However, despite the role of governor envisaged by the Constitution, controversies have erupted so often that many commentators and constitutional experts have repeatedly questioned the need for such a post under our Constitution. They point out that there is the potential of mischief which was even in the Constituent Assembly, but remain unaddressed. Multiple commentators have argued that the post of Governor as it stands need not exist. There is the simultaneous voices of reform also.<sup>v</sup> Given the colonial history of the post, some commentators have suggested that the post itself be abolished.<sup>vi</sup> They argue that 'there is no useful purpose being served by the holder of this office, apart from indulging in intrigue and, in any case, the long history of such meddling suggests a grave error on the part of the Constituent Assembly in continuing with the provisions of the 1935 act insofar as the Governor is concerned.'<sup>vii</sup>

## **THE GOVERNOR UNDER THE INDIAN CONSTITUTION**

Chapter II .-The Executive contains the provisions regarding governor. Articles 153-162 specifically are related to The Governor. Articles 163-164 are related to the Council of Ministers and the role of governor. Article 165 is about the Advocate-General for the State, and Articles 166-167 are concerned with conduct of Government Business. There are related Articles like 174-176, 200-201, 213, 217, 233-234 which touch the sphere of influence of the Governor of a State.

## **THE CONTROVERSY AND THE GOVERNOR: AN HISTORICAL PERSPECTIVE**

### **1. Kerala**

In 1959, Kerala's EMS Namboodiripad government was dismissed based on a report by the Governor. The State government led by CPI stalwarts, was at loggerheads with Governor B.R.Rao over, among several other things, an education bill that was aimed to introduce certain reforms in the private education sector. The Governor was unwilling to give his assent to the contentious bill, which had faced resistance from several organizations and pressure groups. This tussle eventually resulted in the dismissal of the government and imposition of President's rule in the State.<sup>viii</sup> More than six decades later, Kerala is witnessing a similar tussle between the Left Democratic government (LDF) led by Pinarayi Vijayan and the Governor Arif Mohammed Khan. The contentious area is again the education sector. The Higher Education Minister R. Bindu's statement induced the immediate provocation. He asked the governor to sign the University Law Amendment Bill seeking the curtailment of Governor's power in appointing V.Cs. Two days earlier, the governor had removed 15 members of Kerala University's senate for not sending their nominee's name for the Vice Chancellor's selection committee. On October 17, 2022, the Governor warned the state's ministers that he would not hesitate to remove them if they continued to "lower the dignity " of the Raj Bhawan.<sup>ix</sup> The conflict created a storm when the Governor asked VCs of 11 state universities to resign as their appointment process didn't follow the procedure laid down by the University Grants Commission (UGC) which stipulates that the selection committee is required to propose three names for the governor's approval, but only one name was sent. The Governor issued the order after the Supreme Court set aside the order of appointment of M.S. Rajasree as the V-C of the APJ Abdul Kalam Technological University on the same ground. The acrimony between the

Governor and the LDF government is also rooted in a V-C's appointment in 2021 when the governor resisted the reappointment of Gopinath Ravindran as the V-C of Kannur University. The bitterness was aggravated when the Governor called Ravindran a "criminal " who had allegedly plotted protests against the governor in 2019. The actions of the Governor could not be implemented on the ground due to stiff resistance from the government. Nobody resigned, and the Chief Minister Vijayan issued a stern warning to the Governor asking him not to cross the limits of his powers. In response, the governor issued show-cause notices to the V-Cs asking them to respond by November 3 even as they petitioned against the directive before the Kerala High Court.<sup>x</sup> Such conflicts also happened in the past when the non-BJP governments were in power at the Centre. In 1980, Governor Jothi Venkatachalam, a former Congress leader from Tamil Nadu, appointed A.V. Varghese as the Kerala University VC, against the wishes of E.K. Nayanar, the then Chief Minister. There happened a similar tiff of Nayanar with another Governor Ram Dulari Sinha, nearly a decade later. She made some appointments to the senate of Calicut University. In December 2020, Kerala Governor Arif Mohammed Khan turned down a request to summon a special sitting of the Assembly. The purpose of calling this sitting was to discuss and debate the three farm laws.

## **2. West Bengal**

In 1984, A.P. Sharma, the governor of the State, rejected the nominee of the then Chief Minister of West Bengal, Jyoti Basu, for Calcutta and Burdwan universities. He selected others for the post. The miffed Chief Minister passed an amendment to curtail the Chancellor's powers which the governor refused to sign. Lastly, the Union Government had to ask the Governor to resign.<sup>xi</sup> The erstwhile Governor of West Bengal Jagdeep Dhankar had publicly lambasted the Mamata Banerjee-led Trinamool Congress government over the alleged politicization of the education sector and appointment of V-Cs unsuitable and undeserving for the post. He had often commented on law and order and political violence.<sup>xii</sup> Recently in the month of September 2023, the governor and the government are in confrontational mode. The statement of state Higher Education Minister Bratya Basu saying that "there is no necessity of keeping post of the Governor" was created in the British era, referring to the post as a 'White Elephant '. The trouble arose when the Governor CV Anand Bose convened a meeting of the existing Vice Chancellors at the Raj Bhawan on 16th September.<sup>xiii</sup>

### **3. Haryana**

In 1982, the governor of Haryana asked Devi Lal, the leader of the erstwhile Lok Dal, to present his loyal legislators at Raj Bhawan. But a day before Devi Lal could do so, the Governor appointed Congress leader Bhajan Lal as the Chief Minister of Haryana.<sup>xiv</sup>

### **4. Tamil Nadu**

In 1985, the then Tamil Nadu Governor S.L. Khurana didn't concede the Chief Minister M.G. Ramachandran-led AIADMK government's proposal to appoint C.A. Perumal as the V-C of Madurai Kamaraj University and appointed S. Krishnaswamy instead.<sup>xv</sup> Further, in 2020, the then Tamil Nadu Governor Banwarilal Purohit continued to withhold his decision on an application seeking pardon filed by A.G. Perarivalan, one of the seven prisoners convicted in the Rajiv Gandhi assassination case. In September 2018, the Supreme Court had observed, while hearing a connected writ petition, that the governor should take a decision. In this regard, a subsequent resolution was also passed by the Council of Ministers. However, the inaction by the Governor exposed Constitutional fault lines within the Executive wing of the government. In the present case, there has been a substantial delay at the hands of the governor.<sup>xvi</sup> The incumbent Tamil Nadu Governor R.N. Ravi was in the news recently when the Tamil Nadu Assembly passed a resolution urging the President of India, among other things, to fix a timeline for assent to be given to Bills passed by the Assembly. In this regard, the governor, in a public statement on April 6, 2023, said where he implied that if the Bill passed by the legislature transgresses constitutional limits, then it is the Governor's responsibility not to give assent. As a matter of fact, several Bills passed by the Assembly have been pending as the Governor has not made any decision. Here, it would be pertinent to elicit Article 200 of the Constitution which provides options to the Governor when a Bill is presented to him after being passed by the legislature. The first option is to give assent; the second option is to send it back to the Assembly to reconsider it; and the third one is to send the Bill to the President for his consideration. In case the Assembly reconsiders the Bill as per the request of the Governor, he has to give assent even if the Assembly passes it again without accepting any of the suggestions of the Governor. 'It is only logical', says the constitutional expert P.D.T. Acharya, 'to think that when the Constitution gives certain options to the Governor he is required to exercise one of them. Since sitting on a Bill passed by the Assembly is not an option given by the Constitution,



the Governor, by doing so, is only acting against constitutional direction.<sup>xvii</sup> In a further move, the Tamil Nadu Governor R.N. Ravi experimented with a rare kind of 'constitutional adventurism' by dismissing a sitting minister without being advised by the Chief Minister. However, within hours of issuing the order, he kept it in abeyance. The Governor later revealed that the Union Home Minister advised him to seek the opinion of the Attorney General.<sup>xviii</sup> The minister concerned, V Senthil Balaji was facing corruption charges and was arrested by the Enforcement Directorate on June 14, 2023 for an alleged job scam in 2015. He has subsequently been a minister without portfolio in the MK Stalin-led government. The Article 164 of the Constitution says, "The ministers shall hold office during the pleasure of the governor." This implies that a minister is appointed by the governor under Article 164, on the advice of the Chief Minister. It is entirely the prerogative of the CM to select or drop his ministers. If he wants to drop a minister, he accordingly advises the governor, who issues the order.<sup>xix</sup> In *Shamsher Singh vs State of Punjab, 1974*, a seven-judge Constitution Bench of the Supreme Court held that the Governor must exercise his powers "only upon and in accordance with the aid and advice of their ministers, save in a few well-known exceptional situations." In February 2023, in a case relating to the political crisis in Maharashtra, the Apex Court cautioned the Governor again against entering the political arena: "He cannot exercise a power that is not conferred on him by the Constitution or a law made under it." The Tamil Nadu Governor has certainly 'taken a step too far.'<sup>xx</sup> He has surpassed the constitutional mandate.

## **5. Jharkhand**

In the 2005, Jharkhand election, the Bharatiya Janata Party (BJP) emerged as the single largest party. The governor invited the Jharkhand Mukti Morcha (JMM) leader Shibu Soren to form a coalition government with support from the Congress.<sup>xxi</sup>

## **6. Arunachal Pradesh**

In 2016, the then Arunachal Pradesh governor Jyoti Prasad Rajkhova summoned an Assembly session without consulting the Chief Minister. The matter was raised before the Supreme Court, and the decision was declared unconstitutional by the Court. In an unanimous judgment by the Bench headed by Chief Justice J.S. Khehar held, "The governor can summon, prorogue and

dissolve the House only on the aid and advice of the council of ministers with the chief minister as the head. And not at his own will." The Court further said that Article 163 of the Constitution does not give the governor a "general discretionary power to act against or without the advice of his council of Ministers."<sup>xxii</sup>

### **7. Goa and Manipur**

In 2017 state elections in Goa and Manipur, the Congress returned as the single largest party in both states (17 seats in Goa and 28 in Manipur). But the governors of these two states invited BJP leaders Manohar Parrikar in Goa and N Biren Singh in Manipur, respectively, to form coalition governments.<sup>xxiii</sup>

### **8. Karnataka**

In 2018, after the Assembly elections, the BJP leader B.S. Yediyurappa presented a letter to the governor claiming that he enjoyed the support of other members of Legislative Assembly, without giving the details. He requested the governor to invite him for the formation of the government. The governor acceded to his request. The then governor Vajubhai Vala also gave 15 days to prove majority. However, besides Yediyurappa, HD Kumaraswamy of the Janata Dal (Secular) was also a claimant. He had the support of the Congress party as well. Thus, he claimed the support of a simple majority of members of the Legislative Assembly. The Congress and JDS challenged the governor's decision in the Supreme Court, and the period to prove majority was reduced to three days. Eventually, Yediyurappa resigned without having put his Chief Ministership to the floor test. HD Kumaraswamy was then sworn in as the Chief Minister of Karnataka.

### **9. Maharashtra**

In November 2019, after a hung verdict in Maharashtra, the Governor Bhagat Singh Koshiyari quietly invited BJP leader Devendra Fadnavis and administered him oath as Chief Minister. However, the government could last only for 80 hours. After six months, the Governor refused

to nominate Chief Minister Uddhav Thackeray to the Legislative Council. The latter had to meet the Prime Minister to resolve the issue.<sup>xxiv</sup>

## **10. Puducherry**

In 2021, the acrimonious relationship between the Chief Minister of Puducherry V Narayanasamy, a Congress party leader and the Lieutenant Governor Kiran Bedi, led to the removal of the latter. "Despite her laying emphasis on sanitation, rejuvenation of waterborne, and transparency and accountability in the administration, Mrs. Bedi ended up, in the eyes of the public, being someone who was disrupting administration."<sup>xxv</sup> Her differences with the Chief Minister were quite evident. All along, the latter regarded the Lt. Governor as a political adversary, with his political activity centered around her.

## **11. Rajasthan**

In 2019, the Governor's office has often courted controversy for the incumbent, Kalyan Singh's political views. He was a BJP leader while the party in power was Congress.

## **12. Punjab**

In October 2022, Punjab Governor Banwarilal Purohit created a controversy by withdrawing his consent for a special session convened by the Chief Minister Bhagwant Maan to table a motion of confidence. Also, the appointment of Satbir Singh Gosal, a well-known biotechnologist, as the V-C of Punjab Agricultural University in Ludhiana was termed as "illegal" by the Governor Purohit. The latter asked the Chief Minister to remove him from the post immediately. Earlier, the Governor had refused to accept the state government's choice for the Punjab Agricultural University of Baba Farid University of Health Sciences in Faridkot. The State government had appointed cardiologist Dr. Gurpreet Singh Wander, but the Governor rejected the appointment on October 11, 2022. Instead, he asked the government to send a panel of three candidates for the V-C's selection.<sup>xxvi</sup>



### 13. Telangana

In Telangana, Governor Tamilisai Soundararajan and Chief Minister K. Chandrasekhar Rao had unsavoury spats in public even on such trivial issues as visits to flood-affected areas.

#### **THE COMMISSIONS AND COMMITTEES FOR REFORMS**

Multiple Commissions and Committees have been constituted by the Government of India to suggest reforms in the above grey areas. These are as follows:

1. Administrative Reforms Commission (1968);
2. The Rajamannar Committee (1971);
3. The Committee of Governors (1971);
4. The Bangalore Seminar of Experts (1983);
5. The Sarkaria Commission (1988);
6. The Justice V. Chelliah Commission (2002);
7. M.M. Punchhi Commission (2010).

These Commissions have been formed by the Central government to review and reform Centre-State relations and encourage cooperative federalism. Their reports call for appointment of non-political governors through independent broad-based mechanisms, securing the consent of the concerned Chief Ministers. Also, Governors should be given a fixed, non-renewable tenure. The many recommendations include the manner of exercising discretion in the appointment and dismissal of Chief Ministers and the recommendations of President's rule. However, nothing concrete has been done at any level so far. In the 1980s the BJP, along with the Left front government in West Bengal put up a suggestion that the appointment of governors should be made from a panel prepared by the State legislature and that the Inter-State Council should be the appointing authority in place of the Central Government. It may end the monopoly of the Central Government in selecting Governors as its "own man."<sup>xxvii</sup>

#### **CONCLUSION**

The role of Governor is very crucial in the proper functioning of federalism in India. But unfortunately, the institution of Governor has been a bone of contention on many counts. One

main reason is political ideology. The situation becomes worse when the Governor and the government of the State are of different political hues. In such a situation, the Governors tend to transgress their constitutional limits. They interpret the concerned provisions to their own liking. One easy way is to implement the recommendations of the various Commissions and Committees appointed by the Central Government. Accordingly, the necessary constitutional amendments may be effected. Secondly, the Chief Ministers of the concerned States should also ensure that no action needs to be taken which infringes upon the letter and spirit of the Constitution. In many cases, they are also responsible for creating a confrontational atmosphere. Efforts should be made from both sides. In democracy, the value of mutual dialogue and discussions is of utmost importance. It should be well understood by all concerned.

## **ENDNOTES**

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<sup>iii</sup> Ibid.

<sup>iv</sup> Ibid,

<sup>v</sup> Alok Prasanna Kumar, Reforming the Office of the Governor, Economic & Political Weekly, June 23, 2018, Vol LIII No 25.

<sup>vi</sup> Bhatia 2018; Kesavan 2018.

<sup>vii</sup> Ibid.

<sup>viii</sup> Kaushik Deka, Governors VS Chief Ministers, India Today, November 14, 2022.

<sup>ix</sup> Ibid.

<sup>x</sup> Ibid.

<sup>xi</sup> Ibid.

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