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A Critical Analysis of the Office of Governor under the Indian Constitution

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Abstract

The Constitution of India under Article 153 provides for the office of the Governor. It provides that the Governor is the nominee of the Central Government and shall be appointed by the President. He is considered to be the Constitutional head of a State. The Governor plays a key role in facilitating Centre-State relations. He acts as a link between the central and state executives. While intended to act as a constitutional bridge between the centre and the states, this office has been embroiled in numerous controversies throughout India's democratic history. Firstly, the controversy surrounding the appointment process of Governors has been a persistent issue. Historically, the Governors have often been chosen for political reasons, leading to allegations of partisanship and favouritism. Such appointments have raised questions about the credibility of the office and its ability to act impartially. Secondly, in order to enable the Governor to perform his role, the Constitution of India has provided the Governor with wide discretionary powers such as the selection of the chief minister; the determination of the timing for proving legislative majority; the demand for information about day-to-day administration; the power to assent bills or reserve bills for consideration by the President; his role as chancellor of universities etc. However, at times the Governor misuses the power entrusted to him thereby causing a friction with the State Governments. This is especially true when the State Governments are ruled by parties other than by a party ruling the Centre. Recent controversies of the Governor with the Governments of Tamil Nadu, Kerala, Telangana, West Bengal etc. have thus stressed upon the need to revisit the office of the Governor. This research paper focusses on whether there is a need for the office of Governor and if there is a need then how can it be reformed in order to ensure that the office of the Governor can fulfil its intended role as a guardian of federalism and the Constitution in the Indian political landscape.

Keywords: Federalism, Governor, Indian Constitution, controversy, power dynamics.

I. Introduction

The role of the Governor in India, a remnant of the colonial era, has always been a source of disagreement and discussion. Governors are meant to serve as a bridge between the central government and the states, upholding the principles of federalism and impartiality as constitutional guardians. Nonetheless, controversies have persisted over the years, casting doubt on the effectiveness and purpose of this role in Indian democracy. To comprehend these controversies, it's essential to explore the historical evolution of the Governor's office in India. India's history with the position of Governor dates back to 272 BCE when the Mauryan Empire appointed Governors to administer its provinces. This system of governance through Governors continued during the Mughal rule. However, the controversies around the modern version of this position arose after the enactment of the Government of India Act in 1935. Sections 49(1) and 51(1) of this Act defined the role of the Governor. A notable constitutional expert, K.T. Shah, criticized the Governor's role under this act, noting that the Governor held more than just a symbolic position and had powers and responsibilities that made their role more active than the British King. When the Indian Constituent Assembly discussed the Governor's discretion, opinions were divided. Some, like Prof. Shibban Lal Saxena, opposed granting discretionary powers to an unelected authority, while others, like Brajeshwar Prasad, not only advocated for discretionary powers but also believed that the Governor should have special responsibilities, similar to what the British Governor-General had in colonial times⁵. Thus, the British introduced this position to control the provinces, and after gaining independence, it was retained as part of the

Indian Constitution's federal structure to facilitate coordination between states and the central government. Despite various commissions and court rulings attempting to curtail the arbitrary exercise of power by Governors, the situation has not changed significantly. Recent conflicts between Governors and state governments in Tamil Nadu, Kerala, and other places highlight this issue. Therefore, this research paper aims to examine the Governor's office and propose reforms to address these challenges.

II. Research Questions

1. How has the role and powers of the governor evolved in the context of the Indian Constitution since its inception?
2. To what extent does the appointment process of governors ensure political impartiality and independence?
3. Whether there is abuse of the discretionary powers granted to the governor?
4. How has the Judiciary interpreted the powers of the governor?
5. What effect does the misuse of powers of governor have on the federal structure of our Constitution?

III. Research Objectives

1. To trace the historical evolution of the office of the governor under the Indian Constitution.
2. To evaluate the processes involved in the appointment of governors, examining the criteria used, the role of political considerations, and the extent to which appointments ensure impartiality and constitutional adherence.
3. To analyze the discretionary powers vested in the office of the governor
4. To determine the impact of political party affiliations and pressures on the governor's decision-making processes
5. To identify potential legal reforms or amendments to ensure the proper functioning of the office of the governor.

IV. Significance of the Study

A critical analysis of the office of the Governor under the Indian Constitution holds paramount significance as it unravels the intricate dynamics shaping the constitutional and political landscape of the nation. Such a study delves into the historical underpinnings and contemporary implications of the Governor's role, shedding light on constitutional principles, federal structures, and the delicate balance of powers between the center and states. It provides a nuanced examination of the discretionary powers wielded by the Governor, exploring their impact on governance, state administration, and political relationships. This analysis not only contributes to a deeper understanding of India's constitutional framework but also serves as a crucial foundation for informed policy discussions, academic scholarship, and potential reforms to align the office of the Governor with evolving democratic ideals and governance needs.

V. Research Methodology

The research methodology adopted for this study is doctrinal research. It involves an exhaustive examination of legal sources. This approach emphasizes a meticulous review and interpretation of constitutional provisions, statutes, judicial decisions, and legal commentaries relevant to the governor's office. The research will begin with a comprehensive study of the Indian Constitution, focusing on articles and amendments delineating the powers and functions of the governor. Concurrently, an in-depth analysis of pertinent legal cases and precedents, both at the national and state levels, will be undertaken to discern judicial interpretations and implications. The methodology will also involve a scrutiny of relevant legal literature, scholarly articles, and authoritative commentaries to understand the evolving legal discourse surrounding the governor's role. Through this doctrinal

approach, the research aims to provide a nuanced and legally grounded critique of the governor's office, elucidating the constitutional framework and legal principles that shape its functioning and impact on the Indian federal structure.

VI. Literature review

The Governor: Constitutional Position and Political Reality by Rajni Goyal, The Indian Journal of Political Science, Oct. - Dec. 1992, Vol. 53, No. 4 (Oct. - Dec. 1992), Pp. 505-523.

In this paper the author has analysed the constitutional post of Governor. He delves into the appointment procedure of the Governor. He brings out the historical background as well. He then deals with the various powers of the Governor including his discretionary powers. He also elucidates the limitation on such powers. While analysing the same, the author was able to identify various problems surrounding the role of the Governor. The author is of the view that the Governor should keep himself out of active politics, only then the controversies can be rectified or removed. He concludes his essay by stressing upon the importance of the office of Governor.

A Framework to Reform the Appointment Procedure and Discretionary Authority of the Governor by Surya Rajkumar, 4.4 CALQ (2020) 34.

The author in this paper has brought out a framework to reform the office of the Governor. He begins his paper by explaining the historical background as well as the various constitutional provisions relating to the office of Governor. According to the author, the office of Governor has two facets namely the occupant and the powers vested in them. In order to better elucidate the role of the Governor, the author takes help of various case laws. He also has done a comparative analysis of the office of the Governor with that of the situation in United States of America, Australia and Canada. He then deals with the discretionary powers of the Governors and has quoted various instances where this discretion was misused. He concludes by providing that the Governors must act as benevolent representatives honouring the constitutional duty vested in them.

Diminishing Role and Authority of the Governor in Light of Nabam Rebia and Bamang Felix v. Deputy Speaker, Arunachal Pradesh by Annapurna Sinharay, CNLU LJ (8) [2018-19] 323.

The author through his research paper has explained how the Governor play a central role in Centre-State relations, acting as a bridge between the Union and the State governments. He elucidates the role of Governor at times of constitutional crisis. He however, points out that for various reasons, the general public now largely perceives Governors as subservient to the central government. He then quotes the controversies in Uttarakhand and Arunachal Pradesh and the consequential damage of the reputation of this esteemed constitutional office. According to him, it wouldn't be an overstatement to say that no other institution or constitutional office has experienced as significant a decline in its standing as the Governor's office. He then explains the case of Nabam Rebia & Bamang Felix v. Speaker, Arunachal Pradesh Legislative Assembly. According to the author, though the judgement is a sound judgment, it has itself reduced the Governor's powers to some extent.

The Position of a State Governor in India by Daljit Singh, The Indian Journal of Political Science, 1961, Vol. 22, No. 3 (1961), Pp. 232-238.

The author begins his research paper by comparing the office of Governor under the Indian Constitution as well the office under the British crown. He finds starking similarities between the two. He elucidated the provisions of the Government of India Act of 1935 and the provisions of the Constitution relating to the office of the Governor. According to the author, the Constitution has basically incorporated various provisions relating to the office of the Governor from the 1935 Act. He then discusses the importance of the office. According to him, the State Governor is not merely a figurehead as he is often thought to be. He concludes by elucidating the role played by the Governor in the Centre-State relations.

The Role of Governor in Indian Politics since 1967 by Sibranjan Chatterjee, The Indian Journal of Political Science, October-December, 1971, Vol. 32, No. 4 (October-December, 1971), Pp. 522-535.

In this research paper the author has analysed the position of Governor in India since 1967. He has discussed about the legitimacy of Governor's action in many states. In order to discuss the same, the author relies on case studies conducted at various States regarding the role or office of Governor. He has taken various States such that of Rajasthan, Bihar, Orissa etc. The author by analysing these studies have come to a conclusion that the Governors often misuse the discretionary powers conferred on them. He thus calls for a reformation of the office of the Governor in order to ensure that this constitutional machinery does not fail in upholding the values of the Constitution.

VII. Position of Governor under the Indian Constitution:

The Constitution of India under Article 153 provides for the office of the Governor. The scheme surrounding the Governor in the Indian Constitution is very similar to that of the 1935 Act. Article 154(1) grants executive authority to the Governor, which bears a strong resemblance to Section 49(1) of the 1935 Act. Additionally, Article 163(1) specifies the presence of a council of ministers led by a Chief Minister to assist and advise the Governor in carrying out their duties, mirroring the provision in Section 51 of the 1935 Act. This similarity was noted by Constituent Assembly member H.V. Kamath, who remarked that it appeared as though the Government of India Act of 1935 had been adopted without much critical examination. He observed as follows: *“it appears from a reading of this clause that the Government of India Act of 1935 has been copied more or less blindly without mature consideration.”*

In the post-independence period, matters related to the Governor, including their appointment, powers, and relationship with the State, fall within the scope of Chapter III, Part VI of the Indian Constitution. However, the susceptibility to arbitrary exercise of authority by the Governor has not disappeared after independence. The primary change appears to be a shift in the locus of power from the British to the Central Government.

VIII. Controversies surrounding the office of the Governor:

1. Appointment procedure:

A significant and enduring source of controversy regarding the appointment of Governors in India is the manner in which they are selected. Frequently, Governors are chosen for political reasons, giving rise to accusations of bias and nepotism. This means that political connections can outweigh the selection of highly qualified individuals for the post of Governor. The appointments thus cast doubts on the Governors' capacity to act in an unbiased manner.

According to Article 155 of the Indian Constitution, the President is responsible for appointing Governors. Article 157 stipulates that any individual who is an Indian citizen and is at least 35 years old is eligible to assume the office of the Governor. Furthermore, as per Article 156(1), the Governor holds office at the "pleasure" of the President. This means that the President can dismiss the Governor based on political considerations. The inherent discretion in the use of the term "pleasure" was evident in the Supreme Court's ruling in the case of **B.P. Singhal v. Union of India**. The Court ruled that the President, acting on the advice of the Union Council of Ministers, can remove a Governor from office at any time without notice and without specifying a reason. This is why it's well-known that Governors change with different governments.

However, in the case of **Raghukul Tilak vs Hargavind**, the Supreme Court made an interesting observation. It stated that it's not accurate to claim that Governors are entirely controlled by the Government of India. Their office is not subservient to the Indian government. However, the key issue lies in the method of their appointment, which often makes them appear as representatives of the Central government. Furthermore, Article 156 allows the Central government to dismiss a Governor at any time if they fail to comply with Central directives. This was evident in cases of removal of Governors like Prabhudas Patwari in Tamil Nadu and Raghukul Tilak in Rajasthan. They were removed from their positions in 1980 and 1981, respectively. Unfortunately, during the Janata government's tenure in 1977, 15 Governors were dismissed in a single move. Consequently, Governors have been perceived as agents of the central government, and in some instances, they have exercised their powers in the interests of the central government, their employer.

Therefore, the method of appointment and removal effectively makes the Governor subservient to the President, and real-world events support the notion that they cannot act independently. Author Rao draws a distinction between the Governor's role as a 'link' and an 'agent.' Acting as a 'link' implies a more constructive role, whereas serving as an 'agent' suggests a subservient one. It's challenging for the Governor to embody both of these roles simultaneously. Ideally, they should be a representative of the State government, not its opposite, nor a spy for the central government.

2. Exercise of discretionary powers by the Governor:

Article 163 of the Constitution establishes a Council of Ministers whose role is to provide advice and assistance to the Governor in carrying out their duties. However, the Constitution also grants certain discretionary powers to the Governor, allowing them to act independently without the advice of the Council. Some examples of these discretionary powers include:

- (a) The ability of the Governor to reserve a Bill passed by the State Legislative Assembly for the consideration of the President of India;
- (b) The authority of the Governor to recommend the imposition of President's Rule under Article 356 in the State;
- (c) The power of the Governor to appoint a Chief Minister when no political party possesses a clear majority;
- (d) The capacity of the Governor to dismiss the Council of Ministers if they are unable to demonstrate their confidence in the State Legislative Assembly, among other discretionary powers.

One of the most contentious issues involving the misuse of discretionary powers by Governors is their ability to dismiss elected State governments. There have been instances where Governors have invoked their authority to oust governments for political rather than constitutional or legal reasons. This practice undermines the people's will and the democratic system. A notable case of such misuse occurred in 1984 when the Governor of Andhra Pradesh, Ramlal, removed the duly elected Telugu Desam Party government, led by Nandamuri Taraka Rama Rao (NTR). This dismissal was widely viewed as a political maneuver orchestrated by the central government, controlled by the Congress party, to destabilize the opposition. Similarly, in 2005, the Governor of Bihar, Buta Singh, recommended the dissolution of the Bihar Legislative Assembly, a decision that was later deemed unconstitutional by the Supreme Court in the case of *Rameshwar Prasad and Others v. Union of India*. Such dismissals subvert the people's mandate and disrupt the democratic process.

The Governor can use their discretion to reserve certain bills passed by the state legislative assembly for the consideration of the President of India. This is typically done when a bill, if enacted, would affect the powers of the President or the relationship between the state and the central government. However, there were various instances where the bills were not passed and were reserved without any valid reasons by the Governors. This attitude of the Governors thus affects the legislative functions of the State.

As mentioned earlier, Governors possess the authority to propose the imposition of President's Rule in a State under specific conditions. Unfortunately, this power has been abused when Governors have acted at the direction of the central government or a particular political party rather than impartially evaluating the state's situation. Such misuse can erode the autonomy of States and the principles of federalism. In 2016, Arunachal Pradesh experienced a political crisis in which the Governor's recommendation for President's Rule was seen as politically motivated. The Supreme Court later declared this recommendation to be illegal and unconstitutional. The significant ruling in the case of *S.R. Bommai vs. the Union of India* by the Supreme Court served as a strong warning against the frequent use of Article 356 for ousting state governments led by opposition parties. This led to a substantial reduction in the imposition of President's Rule, from 63 instances between 1971 and 1990 to 27 occurrences from 1991 to 2010. This development has indeed contributed to reinforcing the federal structure to a certain extent.

Governors also possess the authority to appoint Chief Ministers in cases of a hung assembly or political crisis. However, there have been instances where Governors have acted arbitrarily or delayed their decisions, resulting in political instability and uncertainty. In 2018, following the Karnataka State election results, the Governor invited the Bharatiya Janata Party (BJP) to form the government, even though the party did not have a clear majority. This decision drew criticism for being politically motivated. Such actions can give rise to accusations of bias and can disrupt the stability of state governments. The situation in Maharashtra, during a time when no party secured a majority in the Assembly elections, is also noteworthy. Governor Bhagat Singh Koshiyari administered the oath of Chief Ministership to Devendra Fadnavis of the BJP early in the morning, despite the absence of a clear majority. Governors also possess discretionary powers in granting pardons and clemency. Misuse of these powers can lead to favouritism or political patronage, undermining the principles of justice and equality before the law.

It's worth noting that Governors serve as chancellors of State universities, which technically gives them some degree of independence to act within the constraints set by the university's regulations. However, as a matter of principle, the Governor is an outsider to the State, and they may not be familiar with the local dynamics required to manage State universities effectively. Consequently, they often need to seek advice from local sources. Nevertheless, it would be inappropriate and unwise for the Governor to clandestinely favor the local members of the party in power at the central level over transparently seeking advice from the Chief Minister and other relevant ministers, as recommended by the Sarkaria Commission. Not long ago, a constitutional crisis unfolded in the state of Kerala when Governor Arif Mohammed Khan directed the vice-chancellors of nine universities to resign. Chief Minister Pinarayi Vijayan argued that the Governor did not possess such authority, accusing Khan of acting against the Constitution and democratic principles. As per university law, the Chancellor, who is the Governor in this context, cannot request the resignation of the Vice-Chancellors since there is no provision empowering the Chancellor to dismiss them. Vijayan stressed that proper procedures should be followed when removing a Vice-Chancellor.

IX. Judicial pronouncements:

In India, there have been several judicial pronouncements and controversies related to the office of Governors. These cases often revolve around the exercise of the Governor's powers, the appointment and dismissal of state governments, and constitutional issues. Here are a few notable cases and judicial pronouncements:

Nabam Rebia and Bamang Felix v. Deputy Speaker, Arunachal Pradesh Legislative Assembly (2017): In this particular case, there was a political turmoil in Arunachal Pradesh that revolved around the actions of the Governor in calling and presiding over a session of the legislative assembly. The Supreme Court of India made noteworthy remarks regarding the boundaries of the Governor's discretionary authority. The Court's final ruling established that the Governor's discretion did not encompass the authority granted by Article 174. Consequently, the Governor could not independently convene the legislative assembly, dictate its legislative agenda, or address the assembly without prior consultation.

Harish Rawat v. Union of India (2016): This case concerned the political crisis in Uttarakhand and the declaration of President's Rule by the Governor. The Supreme Court mandated a floor test in the state assembly, highlighting the significance of upholding the principles of parliamentary democracy and the imperative to safeguard it.

Rameshwar Prasad v. Union of India (2006): In this particular case, the Supreme Court of India tackled the issue of the Governor's authority in approving or withholding consent for bills passed by the state legislature. The court elucidated the restricted scope of the Governor's discretion in this matter. The Supreme Court determined that the Governor's decision to dissolve the Legislative Assembly of Bihar was both unconstitutional and driven by improper motives.

Shiv Sena v. Union of India (1994): This case dealt with the Governor's role in inviting a political party or coalition to form the government in a state. The court affirmed that the Governor should exercise discretion judiciously, considering the political realities and constitutional principles.

S.R. Bommai v. Union of India (1994): In this pivotal case, the Supreme Court established a set of directives governing the Governor's use of discretion when dismissing state governments. The verdict reaffirmed the principles of federalism and the constraints on the Governor's authority in such situations. The court specifically dealt with the issue of floor tests and the Governor's prerogative to request such tests when there are uncertainties regarding the ruling party's majority. This case brought greater clarity to the Governor's responsibilities in maintaining the stability of state governments.

S.R. Chaudhuri v. State of Punjab (2001): This case revolved around the Governor's involvement in appointing judges to the High Court and the significance of upholding judicial autonomy. The court underscored the vital need to seek input from both the Chief Justice of the High Court and the Chief Justice of India when making these appointments.

Shamsher Singh vs. State of Punjab (1974): The Supreme Court ruled that the Governor is obligated to act based on the guidance and recommendations of the Council of Ministers, which is led by the Chief Minister. Article 154(1) explicitly states that while the executive authority of the State is vested in the Governor, it must be exercised by the Governor in accordance with the provisions of the Constitution.

X. How can the office of Governor be reformed?

It is pertinent to note that despite the various judicial pronouncements on the restriction of the powers of the Governor, the misuse or his gubernatorial attitude continues and this is evident through the situation that exists in various States at present. Hence, there is a dire need to reform the office of the Governor. Various recommendations have been provided by various committees since time immemorial, and some of them are as follows.

The Administrative Reforms Commission of 1969 proposed the appointment of Governors for states to be individuals with extensive experience in public service and administration, who are not affiliated with any political party. The Sarkaria Commission of 1988 put forward several recommendations for the selection of Governors. It suggested that Governors should be chosen in consultation with the Chief Minister of the respective state, be accomplished in their respective fields, come from outside the state, have a neutral stance in politics or not have been actively involved in recent political activities, and not be a member of the ruling party. Regarding the removal of Governors, the commission recommended that a Governor's term, which is typically five years, should only be terminated if questions arise about their morality, dignity, or adherence to constitutional norms. If such removal is considered, the State Government should be informed and consulted.

The Rajamannar Committee, established by the Tamil Nadu government in 1968, suggested that the Central government should engage in discussions with the chief ministers of the states before appointing a Governor. The National Commission to Review the Working of the Constitution (NCRWC) proposed that the appointment of Governors should be the responsibility of a committee consisting of the Prime Minister, Home Minister, Speaker of the Lok Sabha, and the Chief Minister of the respective state.

The Second Administrative Reforms Commission recommended that the Inter-State Council should develop guidelines for Governors to follow when exercising their discretionary powers. The Punchhi Commission, established in 2010, recommended granting Governors a fixed term of 5 years and instituting an impeachment process for their removal, similar to that of the President, to replace the doctrine of pleasure. It also reiterated the Sarkaria Commission's suggestion that Governors should not be actively involved in politics and called for an end to the practice of appointing Governors as chancellors of universities.

The Commissions have thus provided very pragmatic recommendations regarding functioning of the Office of Governor. These recommendations should be implemented in earnest, especially those related to the appointment and removal of Governors.

XI. Conclusion and suggestions:

The Governor's role is not just a symbolic one; there are instances where the Governor must take action in the best interests of the people in their state. Especially when a state government prioritizes its political agenda over the welfare of the citizens, the Governor, as the head of the state, must step in to rectify the situation. Therefore, eliminating the office of the Governor is not a viable option. However, the method of appointing and dismissing Governors should undergo thoughtful changes. It's noteworthy that the Constitution Review Committee recently suggested that to restore the Governor's prestige and integrity, the appointment process needs reform.

It's important to highlight that the current qualifications for Governor appointments are rather vague. Consequently, the central government sometimes appoints individuals with strong affiliations to the ruling party, which can undermine the Governor's impartiality. In the United States, a model federal system, Governors are elected by the local population, while in Canada, the provinces have a say in these appointments. India, as a federal nation, should consider adopting similar methods. After all, India's federal structure has evolved significantly since 1967, with various political parties holding power in different states. Given this new landscape, it's essential to revise Articles 155 and 156. The current provisions were crafted to make Governors compliant tools of the central government, as their tenure is at the pleasure of the President, and there are no specified grounds for removal. In practice, this means the central cabinet's pleasure dictates the Governor's status, further enhancing the centre's control. In the context of the multi-party federation that India has become, revising these constitutional

articles becomes imperative. While there may be no issue when a single political party holds power at both the center and in the states, in a multi-party federal system, these old constitutional arrangements need to be updated.

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