

Role of Governor in Central State Relationship

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Abstract – Even though the states have constitutionally guaranteed powers, the constitution provides mechanism by which these powers can be exercised by the centre especially through the Governor. Governor serves as the cord between the centre and the states. The Constitution grants the Centre of full powers as regards to the appointment of the Governor. The role of the Governor is twofold- firstly as Head of the state and secondly as the representative of the Centre. He works as the channel of communication between the Centre and the states. Governor holds a wide degree of discretionary powers over the functioning of the state machinery. He can have a lot of impact upon the working of the state legislature during ‘fair weather’ as well as during the Emergency. As the Governor is appointed by the President, which indirectly leads to his appointment being made by the Council of Minister[1], the Central Government can creep into the works of the state government by this route. So the role and influence of the Governor must be critically examined.

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INTRODUCTION

In the first two decades of Independent India, the Indian National Congress had an undisputed command over the Centre and almost all of the states. The functioning between the Centre and the states was very smooth due to the same party rule. During the latter part of the 1960s the political hegemony of the INC diluted and gave space to various other political factions. There came many instances where the Government in the states was of a different party than that in the Centre. These newly formed state Governments were wary of the interference by the Centre. The state Governments were skeptic of the impartiality and objectivity of the Governor. Whenever the Governor took any decision, one of the parties used to be dissatisfied with that decision and attributed that decision to the political affinity and bias of the Governor. The states now began to criticize the Central Government and ‘its’ Governor. This criticism sometimes was on merits and sometimes was used by the political parties to raise regionalistic passions in the state to get electoral benefits. From then onwards there has been a constant tussle between the Centre and states as regards to the appointment, role and powers of the Governor. Whenever this tussle took form of hostility, the idea of Federalism in India took a hit.

Emergence of regional political parties and the withering away of national parties from some states have left the states’ lobby in tatters. In these circumstances the union sometimes uses its powers to the effect of disturbing the ‘cooperative’ aims of federalism. Divergent and contradictory results in the assembly and national elections lead the Union to believe that the state Governments have lost popular

support and thereby the dissolution of assembly or demands of new elections were seen to be legitimate political tools by the Union. Blatant and unabashed abuse of Constitutional authority for petty political gains has created a trust deficit between the Centre and the states. This mistrust becomes more visible in states where the National Parties are not in power. And here the question as to the limits to the Governor’s power is pertinent.

B.R. Ambedkar, in the Constituent Assembly, mentioned that ‘the Governor has no functions still, even the Constitutional Governor, that he is, has certain duties to perform. His duties according to me, may be classified in two parts. One is, that he has to retain the Ministry in office. Because, the Ministry is to hold office during his pleasure, he has to see whether and when he should exercise his pleasure against the Ministry. The second duty which the Governor has, and must have, is to advice the Ministry, to warn the Ministry, to suggest to the Ministry an alternative and to ask for reconsideration.’[2]

APPOINTMENT OF THE GOVERNOR AND HIS POWERS

The basic rule is that the Governor is appointed by[3], and holds office during the pleasure, of the President[4]; and due to the operation of Article 74 as long as the Council of Ministers at the Centre wants him in the office. This absolute power was showcased in December 1989, when the on advice of the Prime Minister, President asked the resignations of all the Governors for the abject reason that they were appointed by another political party. The power of the President to remove the

Governor cannot be scrutinized by the courts. This makes the removal of the Governor easier than the removal of a Central Government employee who at least enjoys the protections of Article 319. This unusual power of the Centre over the duration of the Governorship holds a deep impact upon the functioning of the Governor.

In 1992 the Governor of Nagaland was dismissed for the fact that the Centre didn't approve of the dissolution of the state legislative assembly by him. It must be noted that the Governor was well within his powers, as provided in Article 174. But this instance along with similar other instances pose a pertinent question as to whether the Governor is empowered to use his powers as per his discretion or as per the Centre's directions. Constitutionally speaking, the Governor has full authority to decide the matters as per his will but the practice has developed in a different direction. The Absolute power of the Centre to remove the Governor tends to make him dutiful and obedient towards the Centre. The power which the Centre holds over the Governor compromises his independence. He, expressly or impliedly, may start taking the directions and approval of the Centre before the use of his Constitutional mandated powers. This can make the fears, of the state Governments of being subject to the Centre, come true.

Subject to this, he holds office for a term of 5 years or until his successor takes charge.[5] He may resign anytime by writing to the President. In contrast to the office of the President, there is no provision for the impeachment of the Governor. Although the Sarkaria Commission[6] recommended that the term of 5 years should be allowed to be completed and in exceptional cases if the Governor has to be removed; it refused to divulge that power from the President. Only restraint and better exercise of powers was thereby recommended. However the Puncchi Commission[7] recommends that the term 'during the pleasure of the president' may be removed from Article 156 of the Constitution. The term of the Governor once appointed shall be full 5 years and a mechanism for the removal of the Governor by the state legislature, on the lines of impeachment of the President by the Parliament, be devised.[8] It was also sought that the Governor may not be appointed to any other office of profit after his term ends.[9] It must be highlighted that the Governor is a nominal representative of the people of the state. Sarkaria Commission recommended that 'the Governor should be a person who has not taken too great a part in politics generally and particularly in the recent past.' This view was also well appreciated by the Supreme Court in the Rameshwar Prasad case.

Unlike Article 74 for the President, Article 163 affords the Governor a wider range of discretionary powers as regards to the functioning of the state machinery. After the 42nd Constitutional Amendment, the President is now obliged to follow the Aid and Advise of the Council of Ministers, but Article 163 allows the Governor to use his discretionary power by his very own reasoning. But these powers cannot be exercised at the whims and

fancies of the Governor, in fact only on settled judicial pronouncements.[10]

Although the Indian Constitution is one of the lengthiest and contains a lot of details, but eventually everything matters as to how these provisions are used practically. Each and every single situation along with the corresponding action cannot be mentioned in the Constitution. What has been for the political class at their discretion must be exercised by them with sincerity.

APPOINTMENT OF THE CHIEF MINISTER

Article 164 empowers the Governor to appoint the Chief Minister of the states. The Chief Minister must be the one who can muster the confidence of the house. Governor is the sole and exclusive authority to appoint the Chief Minister[11] and his decision is not justiciable in the Courts even on the grounds as grave as acting in mala fide.[12] Only the President can call into the mala fide intentions of the Governor and remove him. In cases when a single party or coalitions gets majority, the decision of the Governor is clear as to the appointment. But when there is a fractured mandate, the role of the Governor becomes crucial. The Committee of Governors suggested guidelines which are to be followed while deciding on matters of appointment of the Chief Minister. The Constitutional Courts have also affirmed and reaffirmed these guidelines and has advised the Governors to follow them but in reality no guidelines can encompass as to contain all the possible scenarios. The Governor is still left with a lot of discretionary powers. One of them is the time that is being allowed to the newly appointed Chief Minister to be able to muster up majority in the house. The decision has to be made by the Governor but it is justiciable by the Constitutional Courts as to when and how the floor test will take place. There have been instances where the Supreme Court has dictated as to what will be the time allowed to prove a majority and the conditions under which it has to be proved. The recent example was of, Karnataka assembly elections 2018, where Supreme Court limited the time for floor test to 3 days as opposed to 15 days grace period by the Governor and the court also directed the Governor not to nominate any member of the Anglo-Indian community so to tip the balance in one party's favour.

DISSOLUTION OF THE STATE LEGISLATIVE ASSEMBLY

Another power of Governor which affects the functioning of the state machinery is when to dissolve the state legislative assembly. Here too, the Governor maintains a lot of power and he may gaze towards the Centre for directions as to when the assembly should be dissolved. There have been a lot of instances where the Governor has dissolved the state governments or refused to dissolve it, allegedly at Centre's bidding. These allegations create bad-blood between the states and the Centre

and weaken the Federal structure. The Jammu and Kashmir state Government fell in June 2018 but the assembly was not dissolved. When there were rumours that other parties might stake up their claims to form the Government, the assembly was dissolved. This was almost the anti-thesis of what the responsibilities of the Governor. Undoubtedly the Governor was well within his powers. But was he well within his responsibility is the question that the state leaders were asking. This is not a lone episode; the Governors have actually used their powers in a way that might not be in sync with the principle of Federalism. It has been done since a long time and is still being continued as if it has become the second nature of the Central Government, irrespective of which political faction is in the power.

The states have been raising their voices but on an incident to incident basis. Since the national parties are in power in many of the states, they have not been too sympathetic on this issue towards the regional parties. The voices of concern of the states' governments lack coherence with each other which hampers their effectiveness and has not led to any common convention as regards to the powers of the Governor.

LAWS BY THE STATE LEGISLATURE

As per Article 200 of the Constitution, the state legislative Bills are sent to the governor for his assent to thereby become enactments. The governor has four recourses open to him- he can assent, send the Bill back for reconsideration, withhold his assent or reserve the Bill for president's consideration. The Governor must make that decision as soon as possible but has complete discretion over his decision.[13] Till this point the system works well within tolerable limits and can be justified as to be providing necessary checks and balances along with the recommendations of the Governor. But when the Bill is sent to the President, then the President is under no obligation to decide on the merits of the Bill in a limited amount of time. He essentially gets a 'pocket-veto' over these matters. This is an unwarranted use of a technicality by the President which fetters the spirit of federalism.

The provision of consideration from the President can be completely done away with. Alternatively fixation of time limit regarding the decision of the President can also mitigate the fault line. Punchhi Commission recommends that under Article 201, a 3-6 months' time frame be applied to the President also.[14] Even otherwise, the Governor should be free of political considerations while using his powers.

REFERENCE

1. Article 74 of the Constitution
2. Constituent Assembly Debates, 2nd July 1949.

3. Articles 155, 157, 158 of the Constitution
4. Article 156 of the Constitution.
5. Article 156(2) and K Ballabh v. Commisison of Inquiry [AIR 1969 SC 261]
6. Report of First Commission on Center State Relations, 1987
7. Report of COMMISSION ON CENTRE-STATE RELATIONS, 2010
8. Para 4.4.17 of the Punchhi Commission
9. Para 4.4.19 of the Punchhi Commission
10. M.P. Special Police Establishment v. State of M.P [2004, 8 SCC 788]
11. Samsher Singh v. State of Punjab [1974, 2 SCC 831]
12. Jogendra nath v. State of Assam [AIR 1982 Gau. 25]
13. Hoechst Pharmaceuticals Ltd. and Ors.Vs. State of Bihar and Ors. [AIR 1983 S.C. 1019];
14. Bharat Sevashram Sangh and Ors. Vs. State of Gujarat and Ors. [AIR 1987 S.C. 494]
15. Para 3.6.03, 3.8.04 of the Punchhi Commission

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