

A Study on Transparency in Governor Appointments - A Prospective from Constituent Assembly Debates

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Abstract

This paper attempts to study **how transparency in Governor appointments** has been controversial putting in view of **constituent assembly debates**. “It seems as if to say that the Governor is the same Governor, a representative of the British monarch and as such, the Chief Minister is subject to him and must carry out his orders,” said Rohini Kumar Chaudhuri, the Congress leader from Assam, speaking in the Constituent Assembly Debates way back on July 2, 1949. Even today, the argument about how a nominated Governor can have powers over a popularly elected Chief Minister remains at the core of the debate. A look at the debates in the assembly on the various Constitutional Articles relating to the nature of Governorship appears like a mirror reflection of today’s social media discussions on Governor Purohit’s recent actions. But the words and arguments had far more depth and forethought.

The assembly was sharply divided on what powers a State Governor must have. There was an unanimous understanding that Governors will be agents of the central government, almost like the Governors appointed during the British Raj. In fact, many members pointed out how the wordings of the Articles relating to State Governors were a verbatim reproduction of the section in the British-era Government of India, 1935 Act. Those who advocated more powers to Governors did not mince words when they called leaders and the people of the States (referred as provinces then), utterly incapable. “I feel that there is a dearth of leadership in the provinces. Competent men are not available and there are all kinds of things going on,” said Brajeshwar Prasad, the congress leader from Bihar. (Does it not almost mirror the recent statements of TN BJP’s leaders on the State government?). He went on to assert the centralisation of power is must and federalism is never going to work for India. “Such a procedure may be undemocratic but such a procedure will be perfectly right in the country interest.” Article 163 says the Governor must act as per advise of the council of ministers, but “except in so far as he is by or under this constitution required to exercise his functions or any of them in his discretion.” This exemption placed him on a higher pedestal than the President, who has no option but to accept the decision of the Union cabinet. This discretionary power is what many said could lead to undermining of democratically-

elected governments — much before the Indira Gandhi government's use of Article 356 to dismiss the State government — at least twice in Tamil Nadu itself, based on the reports of Governors.

Key words: Governor appointments, Article 356, constituent assembly, State government.

Introduction

The negative image of the state governors as above all “an agent of the centre” has proved difficult to erase.

After about quarter of a century (1990-2014) of relative calm, the governor's role and powers have again become a controversial issue in Indian politics. This of course coincides with the appearance of a single party with a comfortable majority at the centre. During the last few years, the governors of Karnataka, Madhya Pradesh, Kerala, Maharashtra and, of course, West Bengal have played their roles in such a way as to make them highly controversial without necessarily adding to the glory of the office. If we had thought that the sharp controversies around the constitutionality of governors' actions on many occasions during the 1960s and 1970s had unobtrusively created certain healthy conventions for governors in later decades to follow, we have been proved wrong. The negative image of the state governors as above all “an agent of the centre” has proved difficult to erase. The present controversies have been around the issues of selecting the chief minister, determining the timing for proving legislative majority, demanding information about day-to-day administration, taking apparently long time in giving assent to bills or reserving bills for the President, commenting adversely on specific policies of the state government and exercising powers of the governor as the chancellor of state universities.

Various important and well-intentioned attempts were made both to understand the role of the governor in our federal democratic set up and to recommend ways to make this institution conducive to strengthening center-state relations; for instance, the Administrative Reforms Commission of 1968, the Rajamanar Committee of 1969, Committee of Governors of 1971, Bangalore Seminar of Experts of 1983 and finally, the Sarkaria commission of 1988. All of them more or less agreed on one point, that the image of the governor as merely an agent of the centre sitting in state capitals and desperately seeking an opportunity to run down the state government when it is in the hands of a party opposed to the party ruling at the centre or trying to bring about a government of the same party as at the centre will deform our federalism and destroy our democracy. And all of them made extremely valuable recommendations to make the office of the governor the “linchpin of the constitutional apparatus of the state.”

Objective:

This paper intends to explore and analyze the **constituent assembly that** was sharply divided on what powers a State **Governor** must have and there was an unanimous understanding that **Governors is political neutrality and transparency**

Transparency in Governors functional objectivity : Collision foreseen

Biswanath Das, who was the Prime Minister of Odisha Province of British India and subsequently became Governor of Uttar Pradesh, even foresaw emergence of many political parties and a situation where a Governor nominated by the Prime Minister is not acceptable to a State ruled by a different party. “In such circumstances, ‘rub’ can never be avoided if the power to give administrative pin-pricks is vested in the Governor,” he said. Referring to the powers being vested in the Governors in the British-enacted Government of India Act, 1935, he said that the Governor “had in his hands the nose-strings of the bull so to say. But there is nothing in this Constitution to control the Governor once he is appointed...”

Recently, Governor Banwarilal Purohit had direct meetings with even district-level officials, making them present details on implementation of various government schemes. There are no clear Constitutional provisions that specifically empower the Governors to seek information directly from the officials. The only provision is in Article 167, which says the Governor can seek any information from the council of ministers and the Chief Ministers. But even this Article drew much opposition in the Constituent Assembly.

HV Kamath was one of the members who perhaps put forth the strongest arguments against making it an obligation for the Chief Minister to submit all information called by the Governor. “This is sort of putting the cart before the horse. I think with nominated Governors in the States, it should be left to the Chief Minister or Premier of the State to decide which matter he would like to put before the Governor and which not.” But PS Deshmukh countered that “ordinary matters which are of a routine nature, I am sure, no Governor in his wisdom would like to question.”

“What is the guarantee?” asked Kamath, to which Deshmukh replied: “The guarantee is the Governor’s wisdom and the wisdom of the authority (the Prime Minister) that will appoint the Governor.”

Babasaheb's word

The final word on the debate was Dr BR Ambedkar’s, the chairman of the Constitution Drafting Committee. His central argument was that the Governors will not have powers to overrule the decisions of the council of ministers. “The first thing I would like the House to bear in mind is this. The Governor under the Constitution has no functions which he can discharge by himself: no functions at all.... Even under this article, the Governor is bound to accept the advice of the Ministry.

Therefore the criticism that has been made that this article somehow enables the Governor to interfere or to upset the decision of the Cabinet is entirely beside the point, and completely mistaken.” Kamath interrupted, asking, “Won’t he be able to delay or obstruct.....?” Ambedkar said, “My friend will not interrupt. At the end, he may ask any question and if I am in a position to answer, I shall answer.”

Ambedkar elaborated that while Governors will have no “functions”, they will surely have “duties to perform.” Present controversies have been around the issues of selecting the chief minister, determining the timing for proving legislative majority, demanding information about day-to-day administration, taking apparently long time in giving assent to bills or reserving bills for the President, commenting adversely on specific policies of the state government and exercising powers of the governor as the chancellor of state universities.

Governor appointment process in India needs an urgent review

It is necessary to remember that the office of the governor under the constitution of independent India is altogether different from the provincial governors of the Maurya, Mughal or British empires. Governor’s role and functions had been widely debated by some of the best minds in the Constituent Assembly like Dr. P.S. Deshmukh, T.T. Krishnamachari, H.V. Kamath, Pt. H.N. Kunzru, Alladi Krishnaswamy Ayyar, Rohini Kumar Chaudhury, Shibban Lal Sakshena, K.M. Munshi and of course, Dr. Ambedkar. Their understanding was that the proposed constitution was creating ‘responsible government’ in the states as much as at the centre — that is, responsible alone to the respective legislatures, that the states were indeed sovereign within their own domain, that the discretionary power, beyond the specific situations mentioned in the constitution, does not enable a governor to override the state government. As Dr. Ambedkar had said, “I have no doubt in my mind that discretionary power is in no sense a negation of responsible government. It is not a general clause giving the governor power to disregard the advice of his ministers in any matter in which he finds he ought to disregard.” Therefore, selecting a chief minister of his choice or creating/utilising opportunities for defections to change the party in power cannot be a governor’s job. As the Sarkaria Commission succinctly put it, his task “is to see that a government is formed and not to try to form a government,” which most governors are seen to be doing even to this day.

Many undesirable actions, from the standpoint of federal and democratic constitutional system that governors often at times engage in, could be the result of uncertainty of tenure that they suffer from. That is why many of the committees and commissions mentioned above examining the institution of the governor suggested fixed tenure in office. They also recommended that chief ministers of concerned states should be consulted before appointing a governor. To end the monopoly of the centre in selecting its ‘own man’ as governor, the BJP, along with the left front government of West Bengal, had in the 1980s, even gone forward to suggest that

the appointment should be made from a panel prepared by the state legislature and actual appointing authority should be the Inter-state Council, not the central government.

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The constitution empowers the governor to reserve a bill for the President's consideration. This is an important 'discretionary power' which is necessary for the governor to make sure that state's laws fall within the framework of the constitution. But such gubernatorial interference would be necessary only very rarely and the expectation, contrary to the reality, is that its procedure should not be misused to 'cold storage' a bill fairly passed by the state legislature. The centre's interference with state legislative process was so much disliked by the BJP that in its submission to the Sarkaria Commission, it suggested that the centre before passing a bill even on an item in the Concurrent List should consult the states.

The constitution empowers the governor to ask for information on administrative matters from the chief minister. This provision was hotly debated in the constituent assembly with some members even calling it "very dangerous," for it would likely open the door for gubernatorial intervention in day-to-day state politics. Dr. Ambedkar forthrightly made his position clear on this: "The governor under the constitution has no functions which he can discharge by himself, no function at all." While the article "does not confer upon the governor the power to over-rule the ministry on any particular matter," he has certain duties to perform the most important of which is that he has "to advise the ministry, to warn the ministry, to suggest to the ministry an alternative and ask for reconsideration." "Good and pure administration" requires the governor to perform such duties, said Dr. Ambedkar.

But then, as in principle, the governor is an outsider to the state, he would not be conversant with local dynamics to handle the affairs of state universities. Hence, he will have to seek advice from local sources.

Good and pure administration, that is what Dr. Ambedkar might have felt unnecessary to mention, was that the effective performance of these duties had a prerequisite, that the governor must, in the first place, help create a perception about himself within the government as well as among the citizens of the state that he cares for good and pure administration, and not for promoting the interests of the party ruling at the centre.

Governor as the chancellor of state universities is technically free to act on his own within, of course, the limitations imposed by the university statute. But then, as in principle, the governor is an outsider to the state, he would not be conversant with local dynamics to handle the affairs of state universities. Hence, he will have to seek advice from local sources. It will be both inappropriate and unwise for the governor to lend his ears covertly to the local members of the party ruling at the centre rather than transparently seeking advice of the chief minister and other concerned ministers, as the Sarkaria Commission suggests.

It is indeed true that the insightful and responsible recommendations made by the committees and commissions examining centre-state relations have created widespread public sensitivity and opinion regarding various wrong doings of the centre through the office of the governor which have proved to be damaging for the essential federal structure in India.

The landmark judgment by the Supreme Court in *S.R. Bommai vs. the Union of India* (1994) effectively cautioned against the frequent use of Article 356 for removing state governments run by opposition parties. This drastically reduced the incidence of President's rule from 63 during 1971-1990 to 27 between 1991 and 2010 and this indeed has strengthened the federal structure to an extent. But there is no certainty that similar judgments would follow on other controversial issues in future.

None of the numerous reports and recommendations by the committees and commissions mentioned above has been taken for implementation by any government at the centre. The BJP being comfortably in power at the centre can indeed act upon its own demands for strengthening federalism made earlier, as mentioned above, but possibly change of location in power structure prevents it from doing so. Be that as it may, it is indeed true that the insightful and responsible recommendations made by the committees and commissions examining centre-state relations have created widespread public sensitivity and opinion regarding various wrong doings of the centre through the office of the governor which have proved to be damaging for the essential federal structure in India. Rather than using the governor's office as an instrument for controlling state politics by exploiting his tenurial insecurity, party loyalty or through pandering his ambition it is better for the country in the long run to respect such public opinion and to let the governor act on his sagacity and sound judgment. Whether informed public opinion would be able to organise itself to have a desirable impact on the politics of the day remains to be seen. However, by now, the myth is broken and the promises are passé. The two leading political parties in our country seem like two sides of the same coin. They never meet; in fact, they compulsively oppose each other at all times, but demonstrate similar traits. In their quest for power and the obsession to stay with it, they look like mirror images of each other.

Recurring controversy about Governor's role in state politics

One may well argue that since a political party's goal is to rise to power to 'serve the people', what's wrong in doing what it takes to achieve this goal? It is, after all, a zero-sum game in the long run. In another time and place, a new soap opera like the latest in Rajasthan, and the recent sideshow in Maharashtra, will be played out again with the roles reversed. The party spokespersons shall defend their diametrically opposite positions with equally forceful articulation, without a trace of embarrassment on their faces. And, we shall watch them yet again – amused, helpless and frustrated.

The governors are supposed to rise above their yesteryears' affiliations and loyalties to deliver their duties as the custodians of our Constitution. But how practical is this when a career politician takes this oath? Can one suddenly detach oneself from lifelong beliefs and commitments? Can one erase from memory all the favours,

blessings and support received over decades? If I owe every bit of my career to someone, how equitable can I be in taking critical decisions when that someone is directly involved?

The crux of the problem lies over here. The process of appointing the governors needs an urgent review. Over the years, it has deteriorated to a level beyond anything that the architects of our Constitution could have imagined. For a start, we should not appoint career politicians and bureaucrats to these august positions. No one with lifelong baggage of one ideology or the other should be asked to take such responsibilities. And, the process should not leave any scope for senior public servants to perform their official duties under the lure of such desirable post-retirement rehabilitations. Else, we land up asking too much from an individual.

One of the first things a new government at the Centre does is to change the governors appointed by the previous government. This essentially means putting their own people in these posts. It must stop.

Conclusion

The two duties of the Governors that Ambedkar described are: “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 advise the Ministry, to warn the Ministry, to suggest to the Ministry an alternative and to ask for a reconsideration.”

When Kamath again raised to ask a few questions, Rajendra Prasad, who was chairing the assembly, declared that the discussions are over and all questions are answered. “Dr Ambedkar said that I could put the questions at the end of his speech.” Kamath’s request to raise his questions went unheeded. The Article was finally passed without the amendments sought by members who want to restrict the powers of the Governors. But perhaps the questions Kamath intended to raise still lingers around.

The national political parties should sit together and decide on a protocol to appoint respected and independent individuals from the civic society to these positions on a non-partisan basis. We are blessed with many such luminaries in our rich social order. They should then be trusted to complete their terms irrespective of the political dispensation at the Centre. Such an agreement among all the major parties will benefit everyone. Let’s not forget: today’s ruling block may sit in the opposition tomorrow, just as the current opposition sat on the other side not too long ago. Else, a day is not far when the current facades will disappear and the governor’s office shall become an explicit extension of the ruling party machinery. No political party shall be a winner in this internecine game. After all, what goes around, comes around.

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