

THE ROLE OF GOVERNOR IN INDIA'S DE-COLONISED POLITY TODAY

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Abstract

The role of the Governor in India is a dual one, acting both as a constitutional head of the state and an agent of the central government. Historically a colonial legacy, the office of the Governor has retained its relevance for maintaining executive linkages between the union and the states. However, recent controversies involving Governors withholding assent to state legislative bills and allegations of interference have reignited debates about their role. This paper examines the historical context, constitutional provisions, and contemporary issues surrounding the Governor's office. The complex nature of the appointment and the powers vested in the Governor often lead to conflicts, particularly concerning discretionary powers and the process of ordinance promulgation. Despite these challenges, the office holds significant potential for promoting good governance, inclusivity, and accountability. The paper argues for a balanced approach, where the Governor acts as a bridge between the state and the central government, supporting federalism while respecting the mandate of the elected state government. Recommendations from various commissions have suggested reforms, including greater accountability and limited discretionary powers, but stop short of advocating for the abolition of the post. The paper concludes that a redefined role for the Governor, aligned with contemporary democratic norms, can enhance governance and support the legitimate needs of the state's populace.

Keywords: Governor of India, Constitutional role, Federalism, Discretionary powers, State-central relations, Good governance

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Introduction

The Constitution of India envisages the role of the Governor of the state with a dual vision. The parliamentary form of the government which functions, in principle, under the constitutional heads, both at the level of the union government and the state government, creates the necessity of the role of the President and the Governor who serve as the titular head of the nation and the state respectively. At the same time, the office of the Governor also acts as an “agent of the central government” with the intention to serve as a pivot between the union government and the state at all times thus also allowing the union government to deal with any unprecedented or disruptive social, political or economic situation (Laxmikanth 30.3). Examined historically, the office of the Governor is a key institutional legacy of the colonial government however the constitution makers retained the role, and not just the office, as they saw relevance in sustaining the executive linkages of the central government with the states which carry, within themselves, realised or unrealised legal, political and social implications.

In recent years, the debate around the role and, by extension, the office of the Governor has reignited with states such as West Bengal and Telangana complaining of the interferences by the Governors and Punjab, Tamil Nadu and Kerala filing their pleas with the Supreme Court against their respective Governors for withholding legislative bills passed by the state assemblies and presented to the Governors for their assent. The Supreme Court, in its early observations, has also voiced its concerns over the Governor’s internationalities in withholding assent to the bills passed by the state legislatures. This paper revisits and examines the role of the Governor in India’s de-colonised polity which requires comprehensive scrutiny today in order to understand its relevance, continuity and complications. The paper also proposes that the understanding of the role of the Governor should not be reduced to a nominal figurehead or as a point of political conflict between the elected government of the state and the union government or, even worse, as a political retiree, but must also be valued for continued constitutional legacy and administrative significance albeit circumscribed within contemporary

parliamentary democratic norms and conventions. Additionally, this paper also proposes that the de-colonised office of the Governor must also go beyond its ceremonial roles and add to the meaning of contemporary ideas of good governance, consensus-oriented public administration, deepening of democracy, empathetic leadership and empowerment of the marginalised communities.

History

Scholars have traced the history of the post to the times of the East India Company when designated officials were responsible for running the factories in various parts of the country while simultaneously maintaining contacts with the Company headquarters in London. Having been termed as “a hang-over from the British past”, it would not be an exaggeration to state that the institution of the Governor played a crucial role in the expansionist thought process of building colonial empires in several colonies across North America, Africa as well as in India (Singh 232). In the Indian context, the Charter Act of 1833 played a crucial role in reviewing and regulating the institution of the Governor when significant powers were assigned to the central administrators and the Governors “remained as the agents of the central government in the Presidencies” while exercising administrative powers in their respective jurisdictions (Singh 233). The Government of India Act 1919 was also instrumental in creating a dyarchy of authority on different subjects between the major provincial governments and the central government. Under colonial rule, this was seen as a devolution of power where certain matters of governance were shifted to the popular governments of the provinces.

Even as the demand for self-government grew across India, the British government formalised provincial autonomy through the Government of India Act 1935, but the practice of dyarchy persisted in spite of the devolution of power to the provincial legislature to a certain extent. The emergency powers granted during the years of the World Wars made the role of the Governor fall in complete alignment with the central administration and the British Parliament. The provincial governments ruled by the Congress party in many

provinces, on certain occasions, expressed their differences when it came to the discretionary powers of the Governor. However, scholar Daljit Singh argues that “the Congress had learnt that a Governor armed with plentitude of power could hamstring the activity of the popular rule” (235). This alternative argument posits that it is under this understanding that the Constitution makers retained the office of the Governor. While some objections were raised by members of the Constituent Assembly, B. R. Ambedkar himself never argued against the office of the Governor as he envisaged the Governor working with the state governments. Rather than making a complete break from the past, this institution was retained in the spirit of national integration rather than accommodating decentralisation of power. The spirit of national integration could always be interpreted to serve the interest of the union government.

The Nature of the Appointment

The beginning of the conflict around the role of the Governor comes primarily from the way the nature of the appointment of the office of the Governor is understood and interpreted. Since the Governor is appointed by the President under Articles 155 and 156, he/she is always seen as a nominee of the ruling party in the union government. The President can remove the Governor at any given time and therefore it is the pleasure of the President that dictates the tenure of the Governor. Further, in *Surya Narain v. Union of India*, (1982), the Supreme Court also noted that there was no security of the tenure given to the Governor and the President could withdraw the pleasure at any time (Laxmikanth 30.4). This pleasure has also been interpreted as the assent of the Government of India. Here, it is understood that the President acts on the advice of the Council of Ministers. In this way, the Governor is “ultimate(ly)” controlled by the Government of India administratively but not necessarily directly or intrusively (Hasan 131). The Governor is also mandated to act on the advice of the Council of Ministers of the state government barring the time when the President’s rule is imposed in the state. He/She remains the constitutional head of the state that he/she is serving but is “practically controlled by the state government” (Hasan 131). It is this indirect nature of

the appointment and the resultant duality of the nature of the office that is interpreted wrongly by the stakeholders and hence creates points of conflict.

The Constituent Assembly foresaw the possibility of conflicts at multiple levels which may be direct or indirect consequences of the nature of the appointment. The Draft Constitution had made a provision for the direct election of the Governor however the Constituent Assembly expressed its reservations against such system of appointment. As discussed in Volume IV of the Constituent Assembly debates, M. Laxmikanth notes that direct elections of the Governor would have been incompatible with the parliamentary system in the states and may also have resulted in conflict with the state government (30.3). Apart from the logistical reasons such as elections for one post may require significant spending and disproportionate human resources for arrangements, the Constituent Assembly debates also noted that an elected Governor would invariably become a partial head of the state and may even encourage separatist tendencies and threaten the national unity (Laxmikanth 30.3). Such a direct election could also be a replication of the mandate of the electorate and may make the office redundant. In order to neutralise the political fallout of such elections and to maintain the political stability of the country and the state, the Constituent Assembly decided in favour of the system of nomination of the Governor by the President. This would also allow the union government to maintain its control over the states. Thus, the post of Governor was subjected to presidential nomination alone in national interest removing any room for even consultation with the government of the state.

In the recent past, to establish the independent nature of this constitutional post, in *Hargovind v. Raghukul Tilak*, (1979), the Supreme Court of India made some lasting observations regarding the appointment of the Governor on the question of whether the office of the Governor was an employment under the Government of India. Scholar Shariful Hasan has stated that the Supreme Court came to the conclusion that there was no such relationship between the Government of India and the office of the Governor after applying the employer and employee relationship test. By virtue of being appointed by the President, the Governor doesn't automatically become the servant of the

President. As the head of the state, the Governor occupies the constitutional position and also discharges constitutionally mandated duties in the state he/she is serving. Hasan noted the observations made by the Supreme Court which stated that:

“His office is not subordinate or subservient to the Government of India. His office is not amenable to the directions of the Government of India, nor is he accountable to them for the manner in which he carries out the functions and duties. His is an independent constitutional office which is not subject to the control Government of India” (130).

Supreme Court here pushes for an independent constitutional position of the Governor in principle while taking cognizance of the convoluted reality of the appointment. It is therefore safe to argue that this complex nature of the appointment of the Governor, where Constituent Assembly, Supreme Court, previous union governments and historical precedents have played significant roles in its definition and post-independence evolution, has proven to be the bedrock of the conflict around the office of the Governor.

Assigned Powers

The office of the Governor has been allocated elaborate powers by the Constitution of India that almost resemble the powers enshrined in the office of the President. A Governor has executive, legislative, financial and judicial powers which may be exercised on the advice of the council of ministers of the state or, in complete discretion in certain cases. Article 154 posits that the executive powers of the state are endowed with the Governor and are to be exercised directly or indirectly (Goyal 506). Executive powers such as the appointment of the Chief Minister, ministers, Tribal Welfare ministers in some states, advocate general of the state, state election commissioner, chairman and members of the state public service commission are routine executive actions of the Governor. Some of these appointments are made in consultation with the Chief Minister and the council of ministers. The office of the Governor also functions as the Chancellor of universities in the state. Similarly, notable legislative powers are also vested with the office of the Governor. The

Governor can prorogue or summon the state assembly. He/She can also dissolve the state legislative assembly. The Governor can even send messages to the state assembly and nominate members to the legislative council. When a bill is passed by the legislature, it is sent to the Governor where he/she can give/withhold assent or return the bill or even reserve the bill for the consideration of the President. Most importantly, he/she can promulgate ordinances when the state assembly is not in session (Laxmikanth 30.6). Additionally, the Governor also has certain financial and judicial powers vested in the office. Constituting the finance commission for the state, seeing the annual budget, granting pardons, and making appointments to the judiciary are among the notable financial and judicial powers.

The notion around these abovementioned powers often gets obfuscated as, except in discretionary matters, the Governor is supposed to proceed with the advice of the Chief Minister and the council of ministers in the exercise of the executive powers. There is a constitutional onus on the Governor to establish a working relationship with the state government. At the same time, the Constitution makes certain departures while differentiating the powers of the Governor and the president. The President can, under no circumstances, act in discretion. The 42nd Amendment in 1976 made the advice of the ministers binding on the President's decisions however the Governor is allowed a certain discretionary constitutional space. The "situational discretion" which may be a result of a political situation in the state further allows the Governor some manoeuvring space and has been one of the root causes of friction around the office of the Governor. Similarly, the Article 200 of the Constitution of India which relates to the assent given by the Governor for the bills passed by the legislature has also been a matter of differing opinions. The validity of a Governor's decisions is also protected by the directions given by the President in case of certain responsibilities pertaining to specific states.

Beginning of the Conflicts

The most convenient understanding that is proposed by the partisan scholars and some state governments today is that the 'unelected'

Governor is trying to undermine the elected legislature and executive, and hence, is disrespecting the ‘will of the people’ who elected the government of the day. These incidents are projected as a cardinal sin against the guiding principles of constitutional democracy. Such apprehensions are not misplaced as there is a history of conflict around the powers that have been exercised by the office of the Governor in different states. Some contentious powers have been used to serve political ends abusing the notion of good faith and the spirit of governance.

The most contentious power of the Governor in the twentieth century has been the power to issue ordinances granted under Article 213 of the Constitution of India. The advice of the President or the advice of the Chief Minister and his council of ministers is considered mandatory in specified circumstances and subjects. However, the political situations in the states and the disposition of the central government have resulted in this provision being misused several times. Goyal cites that in the period of 1971-81 in Bihar, the state legislature passed 163 acts for governance while the office of the Governor promulgated 1956 ordinances overriding the principle of good faith and nearly taking over governance while extending the same ordinance several times. Similarly, the powers of the Governor as the ex-officio Chancellor to appoint the Vice-Chancellors of the state universities have also come under the scrutiny of the elected governments as political parties make their intent clear on capturing the educational institutions as a prospective ideological ground. Education being a sensitive subject, it is the prerogative of the Governor to make apolitical appointments to run the educational institutions free from political interferences while being guided by the advice of the ministers and the education minister. The constitution doesn’t grant any such power to the Governor but, in most cases, it is the state legislature which provides the legal architecture to the Governor for the powers to appoint the Vice-Chancellors. In the last few years, states such as West Bengal, Kerala and Tamil Nadu have seen acrimonious disputes in the appointments of the Vice-Chancellors which has resulted in public spats between the ministers/government and respective Governors.

Similarly, the discretionary powers granted by Articles 163, 166 (3), 356 (1), 239 (2) and Sixth Schedule allow the Governor to exercise discretion and discharge special responsibilities. The vagueness around the phrase “in his discretion” mentioned in the constitution, Goyal quotes political scientist K.V. Rao, can be attributed to a vision of the constitution which assumed that Congress would forever be in political power (510). In the appointment of the chief minister in case no political party is able to secure a majority, the discretionary powers to invite either the opposition or the largest party have attracted a lot of scrutiny, especially after 1967 when Congress started to lose majority in many states. NT Rama Rao government, the first non-congress government of Andhra Pradesh, was infamously dismissed by Governor Ram Lal in 1984 who interpreted the assembly majority to facilitate the installation of the Bhaskar Rao government which was then supported by the Indian National Congress party. In 1997, Governor Romesh Bhandari also played a similar political card against the elected government of Kalyan Singh. The use of discretionary powers made the office of the Governor a political power centre which replicated the union government. The opposition parties and regional parties therefore have long campaigned for reducing the scope of the influence and curtailing the exercise of discretionary powers of the office of the Governor.

There are no conditions laid down by the Constitution of India to remove the Governors of the state. As stated earlier in this essay, the office of the Governor has a tenure of five years but there is no fixity or security of the tenure provided to the Governor. The pleasure of the President (also read the recommendations of the council of ministers) alone remains a decisive clause. Under this impression, the Governors of the states who were appointed by the Congress government were asked to resign by the National Front government headed by V P Singh in 1989. As a reciprocatory measure, the Congress government of P V Narsimha Rao also removed the Governors appointed by the previous governments (Laxmikanth 30.4). Thus, the tenure also has been a point of unceremonious conflict between political parties foregrounding the political nature of the appointment.

Is the Americanisation of the Governor possible?

The constituent Assembly of India settled for the Canadian model where the Governor of a state was appointed by the Governor-General of the Centre and the American model was dropped where the Governor is directly elected. The role of the Governor in the state legislatures of the United States differs significantly as compared to the British parliamentary system of government that India has inherited and built its patterns of governance. The democratic institutions of governance in the United States allow the Governor to convey his/her messages to the state legislatures and the executive functions of the Governor of the American state have parallel status to that of the state legislature. This is a replication of the government model that is practised at the level of the federal government in the United States. The most significant point to be noted here is that the American President as well as the Governor of the state is also elected directly by the people. This method of direct elections, where they derive their authority from the people of the state and have responsibilities and accountabilities towards the electorate, allows them to unquestionably create a parallel method of functioning. This model of governance carries certain political benefits as the Governor is not seen as intrusive either as an outsider or an agent of the union government, and has the executive powers to maintain check and balance in the system of governance.

This issue of governance, viewed from the vantage point of the electorate, may even be desirable in some cases where state governments have proven to be fiscally imprudent, lacked in handling law and order or have prioritised populist measures over development measures. The parliamentary form of democracy in India, however, neither has a provision for direct elections nor indirect elections for the office of the Governor. The role and structure of the elected government for public administration are clearly defined and have also acquired political and legal support over the years. The Governor's role was limited to the peripheries of the Raj Bhavans where ceremonial activities took precedence over the matter of governance. Courts through judicial intervention and Committees such as Sarkaria Commission (1988), Venkatachaliah Commission (2002), and Punchhi Commission (2010) have also advocated for

reform in the appointment, tenure and powers of the Governor and even suggested the election of the Governor. However, they all stop short of proposing the possibility of Americanisation of the office of the Governor. None of them have argued for the abolition of the post but recommended greater accountability and limited discretionary powers. Preventing politically motivated partisan actions and upholding the federal structure of governance is also reflected in the recommendations of these committees.

The Way Forward and Conclusion

In the Indian context, a very partisan political sphere has evolved in the last decade or so with national parties such as the BJP no longer restricting themselves within the national party tagline and showing a massive appetite for state/regional politics and even legitimately breaching the territorial hold of the regional parties in Assembly elections. Notwithstanding the political charge of the BJP, the regional parties have also shown remarkable resilience in not ceasing the political control of different states. In such a polarised political climate, the multi-dimensional questions of good governance in the specific context of the office of the Governor have vanished from the gaze of public debates and even research literature. Often the post and role of the Governor becomes the point of conflict whenever he/she makes any intervention in the state polity which differs from the interests and wishes of the government of the state. With the multifaceted nature of governance and public administration in contemporary society, and in the spirit of federalism and national progress, the office of the Governor should be allowed to make limited interventions in legitimate spaces. The political overreach, if realised, should be countered with due processes of checks and balances rather than unnecessary politicisation of the post and the role of the Governor.

Additionally, the office of the Governor should not only be understood for the dual role attached to it by the Constitution but must also now be reoriented towards the ever-evolving notions of governance, and in realising a de-colonised, community-driven and inclusive administration. Across the spectrum of scholarship, it is a universally acknowledged idea that the mandate

of democratic processes must be honoured in both letter and spirit, and the popular government of the state must be given its due priority in law-making and the exercise of executive powers. The political vision and social programmes of the political party that the democratic electoral processes approve should not be dampened by the office of the Governor. However, rather than being straight-jacketed into becoming an agent of the union government or a nominal head of the state, a gubernatorial middle path of acting as a bridge between the state and the central government would serve the spirit of the nation, national integrity and federalism. Maintaining the persistent and neat demarcation between the ‘elected’ government and the ‘unelected’ Governor will do severe injustice to the office of the Governor. This historical institution, having served the purposes of the colonial government, should also serve the modern de-colonial demands of good governance, administrative delivery, inclusivity, accountability and social responsibility. If not always seen from the rigidity and inflexibility of the constitutional norms and conventions attached to the office of the Governor, this institution can be reassessed and redefined as a living institution, a multi-faceted nodal point of governance and thus contribute to the legitimate needs of the populous of the state.

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