



A RETIREMENT PACKAGE OR AN OFFICE OF RESPONSIBILITY? EXAMINING THE ROLE OF GOVERNOR IN STATE POLITICS

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Finally, the research is concluded stating measures needed to reform this prestigious institution.

Keywords: Governor, Discretionary Powers, Centre-State relations, Nominal Head, Dissolution

ABSTRACT

The basic premise of this research is to examine and analyse the role of the Governor in state politics. The office of the Governor has again come under a lot of criticism after the dissolution of the J&K State Assembly in November last year. The research aims to highlight the irregularities in the functioning of the office of the Governor.

The research aims to emphasise on the growing importance of the Governor in state politics and critically evaluates his/her role and functions in bridging the gap between the Centre and the State. Furthermore, the research looks into the historical significance of the office of the Governor. The office of the Governor underwent a paradigm shift after the 1967 elections. Subsequently, a few case studies have been discussed to understand the role played by the Governor in solving Centre-State disputes.

The author also purports to examine the discretionary powers of the Governor and the anomalies attached to such powers. Moreover, the research demarcates the dual role played by the Governor as the constitutional head of a State and as an agent of the Centre.

1. INTRODUCTION

“The Governor is the linchpin of the constitutional apparatus of the State. His role has emerged as one of the key issues in union-state relations. He has been criticised for want of impartiality and sagacity and for being used by the Central Government for its own political ends.” – Sarkaria Commission report¹

The role of the Governor has become one of the fundamental issues in Centre-State relations. The Indian political scene was dominated by a single party for nearly two decades post-independence. Issues which arose in the working of Centre-State relations were usually matters for adjustment in the inter-party forums and the Governor had very little occasion for using his discretionary powers. The office of Governor remained largely ceremonial. Events which unfolded in Kerala in 1959 brought the role of Governor into prominence after the President's Rule was imposed. A paradigm shift took place after the 1967 General and State elections when non-Congress parties emerged in many states. The subsequent decades witnessed saw breaking up of political parties and the

¹ Chapter IV, Sarkaria Commission Report, Inter-State Council Secretariat, Ministry of Home Affairs,

<http://interstatecouncil.nic.in/report-of-the-sarkaria-commission/>



formation of regional parties. Regular, sometimes unpredictable realignments of political parties and groups took place for the purpose of forming the government. These instances gave rise to a persistent instability in several State Governments. As a result, the Governors were asked to exercise their discretionary powers more frequently. The way in which they exercised those powers has had a direct impact on Centre-State relations.²

The role of the Governor has been attacked on the ground that some Governors have failed to display the qualities of impartiality and sagacity expected of them. It has been alleged that the Governors have not acted with necessary objectivity either in the manner of exercise of their discretion or in their role as a fundamental link between the Union and the States. Many have traced this mainly to the fact that the Governor is appointed by, and holds the office during the pleasure of the President. The part played by some Governors, particularly in recommending President's Rule and in reserving State Bills for the consideration of the President, has aroused vehement acrimony. Recurrent removals and transfers of Governors before the termination of their tenure have lowered the esteem of the office. Criticism has also been levelled that the Central Government utilises the Governors for its own political ends. Many Governors, looking forward to further office under the Union or active role in politics after their tenure, came to regard themselves as agents of the Union.³

2. POWERS AND FUNCTIONS OF THE GOVERNOR

The Governor of a State possesses Executive, Legislative, Judicial and Emergency powers to efficiently exercise his constitutional responsibilities.

2.1 Executive powers of the Governor

The executive powers of the State are bestowed on the Governor who is authorised to exercise them either directly or through officers subordinate to him.⁴ In the exercise of his responsibilities as the Head of the State, the Governor appoints the Chief Minister and other Ministers on the advice of the Chief Minister. The Ministers aid and advise the Governor and hold the office during the pleasure of the Governor. The Governor makes rules for effective transaction of the business of the Government of the State and for the allocation among Ministers of the business.⁵ It is the responsibility of the Chief Minister to communicate the governor all decisions of the Council of Ministers relating to the administration of the affairs of the State and proposals for legislation.⁶ If the Governor demands, he must furnish information related to the administration of the affairs of the State and proposals for legislation. If the Governor so desires, the Chief Minister has to submit for the consideration of the Council of Ministers any matter on which decision has been taken by a Minister but which has been considered by the Council.

² Sibranjjan Chatterjee, Governor's Role in the Indian Constitution, p.1-2 (1992).

³ Era Sezhiyan, The Governor and her role, <https://frontline.thehindu.com/static/html/fl1813/18131070.htm>

⁴ Indian Const., art 154

⁵ Indian Const., art 166

⁶ Indian Const., art 167



The Governor has the power to appoint the Advocate-General of the State who holds office during the pleasure of the Governor.⁷ The members of the State Public Service Commission, State Election Commission and the State Finance Commission are appointed by the Governor.

In the States of Madhya Pradesh, Chhattisgarh, Jharkhand and Odisha, it is the special responsibility of the Governor to see that a Minister is placed in charge of tribal welfare. In States like Assam, the Governor is given certain special powers with respect to tribal administration under the Sixth Schedule of the Indian Constitution.⁸

2.2 Legislative powers of the Governor

As a fundamental part of the State Legislature, the Governor enjoys extensive legislative powers. The Governor is to summon either or both Houses of the State Legislature to meet at a time and place as he thinks fit. The only prerequisite is that both the Houses must reassemble within six months of prorogation or adjournment, i.e., both the Houses must meet at least twice a year.⁹ He is empowered to prorogue either House of the State Legislature or dissolve the State Legislative Assembly. He may address either House and may send messages to it on a bill pending in the Legislature or otherwise. It is provided that the House to which the message will consider any matter required by the message to be taken into consideration. The Governor addresses the House or the Houses on the commencement of the first session of each year.¹⁰ When a bill has been passed by a House of Houses, it must be

presented to the Governor. The Governor must communicate that he has assented to it or that he has withheld his assent or that he has reserved the bill for the consideration of the President. The Governor may return a non-Money Bill with a message of re-consideration of the whole Bill or parts of it. He may suggest amendments. The House of Houses must consider his suggestions without delay. If the bill is passed again by the House or Houses or without amendment and presented to the Governor for assent, the Governor shall not have any veto power over the Bill and must give assent to it.¹¹

The Governor also has special legislative power of promulgating ordinances during the recess of the State Legislature, if he is satisfied that there exist circumstances which make it necessary for him to take immediate action. Such an ordinance has the same force and effect as an Act of the State Legislature. This ordinance ceases to operate at the end of six weeks from the re-assembly of the legislature unless a resolution disapproving it is passed by the House or the Houses before the expiry of the period.¹² The Supreme Court has pointed out a glaring example of the abuse of the ordinance making power by the Executive. The Court held that continuously passing ordinances without any intention of passing the law subverts the legislative process and it is against the Constitution.¹³

The Governor has the power to nominate members of the Anglo-Indian community to the Legislative Assembly if they are not

⁷ Indian Const., art 165

⁸ Brij Kishore Sharma, Introduction to the Constitution of India, p. 215 (7th Ed., 2015).

⁹ Indian Const., art 174

¹⁰ Indian Const., art 176

¹¹ Indian Const., art 200

¹² Indian Const., art 213

¹³ D.C. Wadhwa v. State of Bihar, (1987) SCR (1) 798



adequately represented.¹⁴ In respect to the Legislative Council, he has the power to nominate persons having special knowledge or practical experience in respect of matters such as literature, science, art, cooperative movement and social service.¹⁵

2.3 Judicial powers of the Governor

The Governor is entitled to be consulted by the President in the appointment of judges of the State High Court. He is the *de jure* head of the State and as such he has the powers which correspond to the prerogative of the British Crown. The Governor has been provided constitutional powers to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any convict of any offence against any law related to any matter to which the executive power of the State extends.¹⁶

2.4 Emergency powers of the Governor

The Governor has been provided constitutional powers under which he/she can submit a report to the President whenever he/she is convinced that a situation has arisen in which the Government of the State cannot be carried on in conformity with the provisions under the Indian Constitution.¹⁷

It is observed that there are a number of instances, when the President's rule has been recommended by the Governors to provide Central government time to reorganise its political interests or effectuate crises.

2.5 Miscellaneous powers of the Governor

Amongst the miscellaneous powers, one of the Governor's most important functions is to receive the annual report of the State Public

Service Commission and passes it on to the Council of Ministers for comments. After the comments of the Council of Ministers are available, he forwards the same to the Speaker of the Legislative Assembly for the purpose of placing it before the House.¹⁸

3. DISCRETIONARY POWERS OF THE GOVERNOR

Discretionary powers of the Governor may be divided into two parts: *First*, the explicit discretion mentioned in the Constitution under Article 163; and *second*, the implicit or the hidden discretion which is derived from requirements of the political situation. It can be styled as 'situational' discretion. In other words, the Governor has marginal discretion in a particular situation. It was the objective of the framers that the situational discretion would be exercised not in ordinary situations but under the urgent needs of the political circumstances existing in the State. The instances where the Governor's marginal discretion may be exercised are as follows:

- a) Appointment of the Chief Minister: The Governor exercises situational discretion in the appointment of the Chief Minister. If at the end of every general election, every State in India finds one party with a stable majority in the Legislative Assembly and a recognised leader, the Governor will have no choice

¹⁴ Indian Const., art 333

¹⁵ Indian Const., art 171

¹⁶ Indian Const., art 161

¹⁷ Indian Const., art 356

¹⁸ Indian Const., art 323



but to appoint that leader. However, if there is no recognised leader and there is no clear majority, the Governor may get a chance to exercise his discretion. It is important to note that it is not necessary for a person to seek the vote of confidence before becoming the Chief Minister. The Governor may appoint him first and then ask him to seek a vote of confidence within a stipulated period of time.

b)

The question of appointing the Chief Minister came into being in 1952 in the State of Madras where no party returned with a clear majority in the Assembly. The Congress Party emerged as the single largest party while T. Prakasham formed a United Democratic Front and claimed majority in the Assembly. After examining the political situation, the Governor Sri Prakasa invited C. Rajagopalachari for the formation of the ministry in the State on the condition that the Congress Party emerged as the `largest party` in the State. In Odisha, after the General Elections of 1952, no party secured an absolute majority in the State Assembly. The Congress Party emerged as the largest party in the State securing 67 seats in the House. The Governor exercised his discretion and summoned the leader of the largest party to

form the Ministry. In Rajasthan, the Congress Party secured 88 seats in the House and the Governor of Rajasthan, while exercising his discretion, invited M.L. Sukhadia to form the government on the plea that he was the leader of the largest party in the Assembly. He did not invite Maharwal Laxman Singh, the leader of the United Front to form the government in spite of the fact that he had the majority of the members in the Assembly.¹⁹

It is unfortunate that the practice of inviting the leader of the single largest party on the ground of the so-called `Sri Prakasa Doctrine` was not followed by the Governors in many states. In many states where non Congress parties emerged as the `largest party` after the election, the Governors did not invite the leaders of the largest groups to form the governments.

According to the recommendations given by the Sarkaria Commission, if there is no single party having an absolute majority in the assembly, the Governor should select a Chief Minister from among the following parties or groups of parties by sounding them, in turn, in the order of preference given below:

- i. An alliance of parties that was formed before the elections took place.
- ii. The single largest party willing to form the government with the support of others.
- iii. A post-electoral alliance of parties, with all the partners in the coalition joining the government.
- iv. A post-electoral alliance of parties, with some of the parties in the alliance forming a government and the remaining parties supporting the government from outside.

¹⁹ Ramesh Kumar Arora, Indian Public Administration: Institutions and Issues, p.195, (1995).



b) *Dismissal of a Ministry*: The discretionary power of the Governor to dismiss a Ministry also seems to exist if the Governor has reasons to believe that the Ministry is engaged in activities which are likely to threaten national security or integrity. It is likely that the Ministry has lost the confidence of the legislature as a result of a split in the party in power and the Ministry may like to continue in office and it may advise the Governor to prorogue the Assembly with a view to avoiding a censure motion which is likely to be passed. In the meantime, a majority of members in the Assembly may submit a petition to the Governor to the effect that the Ministry does not enjoy the confidence of the Legislature any longer and that it should be dismissed. The Governor, in this case, may adopt any of the alternatives including the dismissal of the Ministry.

Although the Governor does not normally dismiss a Ministry as long as it enjoys the confidence of the Assembly, yet the Governor's use of his discretion to dismiss a Ministry which still enjoys the support of a majority will be justified if he is convinced that there have been clear cases of corruption to which the Ministry is a party, and that in the interest of purity in administration, the Ministry should be dismissed from office. But the Governors of the States have adopted double standards in using their discretion in this regard. The dismissal of the Janata Dal government in 1989 created a widespread controversy. It clearly epitomised the misuse of the office of the Governor. The Supreme Court, after hearing this case, stated that:

*"The action of the Governor was more objectionable since as a high constitutional functionary, he was expected to conduct himself more fairly, cautiously and circumspectly. Indeed it appears that the Governor was in a hurry to dismiss the Ministry and dissolve the Assembly."*²⁰

It is pointed out that the Governor is within his constitutional right when he dismisses a Chief Minister on the ground that the administration was corrupt. The Karunanidhi government of Tamil Nadu was dismissed on the same grounds in 1976. But there are cases where Governors did not dismiss the Chief Minister on this ground. Biren Mitra in Odisha and Pratap Singh Kairon in Punjab resigned on the advice of the then Prime Ministers, but the Governors in both the cases kept silent. Similarly, in Rajasthan, the Governor did not ask the Chief Minister Sukhadia to resign, though the High Court had passed orders against him in a writ petition filed by a defeated candidate.

According to the Sarkaria Commission, the Governor cannot dismiss the Council of Ministers as long as they continue to command a majority in the Legislative Assembly. Conversely, he is bound to dismiss them, if they lose the majority but do not resign.²¹

When the Legislative assembly is in session, the question of majority should be tested on the floor of the House. If during the period when the Assembly remains in prorogation, the Governor receives reliable evidence that

²⁰ S.R. Bommai v. Union of India, AIR 1994 SC 1918

²¹ Naotem Sanajaoba, Law and Society: Strategy for Public Choice, p.319, (2001)



the Council of Ministers has lost `majority` he should not, as a matter of constitutional propriety dismiss the Council unless the Ministry has secured the vote of confidence. The Governor may advise the Chief Minister to summon the Assembly as soon as possible to test the majority.

Usually, it would be reasonable to allow the Chief Minister a period of 30 days for the summoning of the Assembly unless there is very urgent business to be transacted like passing of the Budget and in such case, a shorter period may be allowed. Under certain exceptional situations, the period may extend to 60 days.

c) *Dissolution of the Legislative Assembly*: It is an abnormal practice to dissolve an Assembly before completion of its term. However, dissolution at an earlier date with a view to appealing to the electorate and seeking to solve a situation of political instability is an accepted principle. The Governor has been vested with the power to dissolve the Legislature. Is the Governor bound to accept the advice of the Council of Minister in this respect? The British practice has established this convention that a defeated Ministry has to choose between meeting the electorate to seek a fresh mandate in support of its policies and resignation. But in Britain, such elections have been rare. On the other hand, in India, there is no particular provision under the Constitution to govern a situation of this nature. In 1954, a defeated Ministry in the State of Travancore-Cochin advised the Rajpramukh to dissolve the Assembly and the advice was accepted. But in 1955, in the

same State, the advice of another defeated Ministry was rejected.

An intriguing instance regarding the dissolution of the Assembly took place in Kerala after the General Elections in March 1965. No party emerged in a position to form the government after the election. The Governor reported to the President that there was no possibility of forming a viable government in the State. As a result, the Legislative Assembly was dissolved even without calling the first meeting.²²

Therefore, it appears that the Governors, over the years, have not adopted uniform criteria with respect to dissolution of the Assembly. In fact, they have exercised their marginal discretion differently in refusing/granting the dissolution of the Assemblies of the States. The Governor has been empowered to use his discretionary powers in other instances as well:

- i. Demanding information regarding legislative and administrative matters from the Chief Minister.
- ii. Asking the Chief Minister to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council.
- iii. Refusing to give assent to a Bill passed by the Legislature and sending it back for reconsideration.
- iv. Reserving a Bill passed by the State Legislature for the assent of the President.
- v. Seeking instructions from the President before promulgating an ordinance.
- vi. Submitting report to the President to enforce State Emergency.

²² Subhash Shukla, Issues in Indian Polity, p.105, (2008)



3.1 Critical appraisal of the Governor's discretionary powers

It is pertinent to point out that the Governor's discretion under Article 163(2), although appears autocracy. The Governor cannot act as an autocrat under any circumstance, so long as he functions within the democratic structure. However, neither the Council of Ministers nor the State Legislature can check the discretionary powers of the Governor, but the President can. It indicates that the Governor cannot freely exercise his discretionary powers. If the power is misused to forward personal ambitions or as a partisan in the currents and the cross-currents of state politics, the President can always put a check on these and if necessary, he may dismiss him as well. Therefore, the Governor is not a free agent either during normal times or abnormal times.²³

4. THE ROLE OF GOVERNOR IN STATE POLITICS: CASE STUDIES

The role of the Governor in state politics has always been disputed since independence. There have been instances where the role has been misused on the direction of the Central government. Scholars and experts have argued that the role played by the Governor is more of a spoiler instead of someone who can bridge the Centre-State divide.

4.1 A Case Study of the Kerala squabble in 1959

The outcome of the elections in Kerala in 1957 came as a shock to some as a communist government was elected through democratic means for the first time in history. Subsequently, on the invitation of the Governor, E.M.S. Namboodiripad was sworn

in as Chief Minister. It was the first non-Congress government of the fourteen States of the Union. The victory for the communist party received international praise.

Soon after assumption of power, the Chief Minister announced that his government would try its best to eradicate corruption, initiate land reforms, and formally associate the communist people in the execution of administrative policies. To some extent, its policy helped the working class and tried to break all opposition to the government. The police of the State was neutralised and made toothless. The government adopted a policy of discrimination against the non-communist unions and other groups as well. It attempted to jeopardise the judicial system through administrative interference and withdraw a plethora of cases. As a result of this, the opposition parties jointly decided to carry out a civil disobedience campaign to bring down the government. The events of disorder, lawlessness and insecurity of life became the order of the day.

The Governor of Kerala forwarded a report to the President narrating the reasons behind the unrest against the government. The President noted that the situation in Kerala has become very critical. He concluded it was extremely difficult to carry out administration under such circumstances. The Central Government responded by dismissing the Council of Ministers by invoking Article 356 of the Indian Constitution. The fundamental reason behind this move was the mass upsurge by the people of the State. The Ministry was dismissed and the Assembly was dissolved.

²³ Gautam Bhatia, Do we need the office of the Governor?, (May 24, 2018),

<https://www.thehindu.com/opinion/lead/do-we-need-the-office-of-the-governor/article23971800.ece>



On 31st July, 1959, the President of India took over the powers of the State executive.

This move led to a nation-wide frustration, especially amongst non-Congress parties. On the other hand, the Prime Minister of India felt that the intervention was inevitable and necessary to restore the order.

It was felt that the imposition of President's Rule in the State and the dismissal of the Ministry is not a healthy process. In a Parliamentary democracy, the method through which a government can be removed by the opposition should be strictly constitutional. In the case of Kerala, the Ministry enjoyed the full support of the Assembly and it had full right to continue its remaining term. Therefore, it was obvious that the Governor showed partiality in sending a report to the President.²⁴

4.2 A Case Study of the Constitutional impasse in Rajasthan in 1967

Post-1967 elections, the Congress was unable to get absolute majority in Rajasthan in order to form the government. Although it emerged as the single largest party in the Assembly, the opposition parties wanted to form their own government. Subsequently, they jointly forwarded a letter of the Governor staking claim to form the government since they had gathered requisite numbers.

Both Congress and non-Congress leaders claimed majority support in the State Assembly. Meanwhile, the Governor received twelve identical letters from Independent members expressing their support to the opposition. On 1st March 1967,

the opposition leaders formed the United Front and expressed their desire to form the government to the Governor.

On 3rd March 1967, the United Front adopted a 17-point programme to be followed in case the coalition government is established. Simultaneously, the Congress leader met the Governor and tried to convince him that he had a right to be invited to form the government as he was the leader of the single largest party. Subsequently, the Governor made an announcement that the Congress leader has been invited to form the government. In the opinion of the Governor, the decision was made on the basis that the Independent candidates were uncertain about their policies and kept changing their stance during the election process. The Governor did not consider the independent candidates as an inalienable part of the opposition alliance.

However, this decision of the Governor was heavily scrutinised by the opposition parties. It was alleged that the Governor played a partisan role in inviting the Congress leader to form the government. It was pointed out that if the Governor was to follow the precedent, he should not have ignored the status and legitimacy of the United Front which claimed majority in the Assembly. Moreover, it was argued that against all sense of reasonableness the Governor completely excluded the Independents. Ultimately, the Congress party was invited to form the government without having the requisite numbers in the Assembly.

The events in Rajasthan made it evident that the Governor was directly involved in the

²⁴ Mansi Jaiswal, Here's a timeline of controversial decisions by 'Honorable Governors', (May 21, 2018), [https://www.business-](https://www.business-standard.com/article/politics/here-s-a-timeline-of-controversial-decisions-by-honourable-governors-118052100857_1.html)

[standard.com/article/politics/here-s-a-timeline-of-controversial-decisions-by-honourable-governors-118052100857_1.html](https://www.business-standard.com/article/politics/here-s-a-timeline-of-controversial-decisions-by-honourable-governors-118052100857_1.html)



factional politics of Rajasthan. He exercised his marginal discretion to appoint the Congress leader as the Chief Minister of the State with an intention to help the Congress Party. The way in which the Governor ignored the affiliations of Independents was, therefore, unrealistic and tendentious. It was not the duty of the Governor to enquire into the programme for which they contested the elections. One should not forget that this convention was not applied uniformly in the States of Punjab, Bihar and West Bengal where non-Congress parties emerged as the single largest parties.²⁵

4.3 A Case Study of the role played by the Bihar Governor in 1998

In September 1998, the Governor of Bihar recommended for the imposition of the President's rule in the State. According to the Governor, "The Bihar Government epitomises the most malignant and uncouth levels of functioning in Indian politics." However, the President of India repeated history by returning a Union Cabinet resolution seeking the imposition of President's Rule in Bihar and the suspension of the Assembly. After mulling over and discussing the subject for nearly 80 hours, the President, in a long note asked the Government to rethink about the decision. No evidence of constitutional breakdown was observed. After that, the Union Cabinet under pressure from the regional allies withheld its recommendation and did not press it further.

The President stated three grounds on which he felt the Central contention on Bihar was unsuitable. In his note to the Prime Minister, he discounted the Centre's position on

deteriorating law and order condition. He noticed that law and order condition in some other States was also severe. Bihar was not an exception with regard to law and order as it has been projected by the Governor.²⁶ Furthermore, the Sarkaria Commission report has also opposed the dismissal of a majority government in any State. The President referred to the report which mentioned that the situation of mal-administration in a State where a duly constituted ministry enjoying majority support in the Assembly, is in office, the imposition of President's Rule will be immaterial to the purpose for which the power under Article 356 is conferred. Moreover, the President examined that the Union Government did not give any warning to the errant State Government which has also been mentioned in the Sarkaria Commission report. The Supreme Court, too, in the *S.R. Bommai* case stated that the Centre must "warn an errant State in specific terms."

4.4 A Case Study of the Karnataka muddle in 2018

Elections to the State Assembly of Karnataka were conducted in 2018 where the Bhartiya Janata Party (BJP) emerged as the single largest party followed by Congress and Janata Dal (Secular). The question arose whether Governor should invite the single largest party to form the government and prove its majority in the House or a post poll alliance to form a majority that overcomes the single largest party and form the government.

However, the Governor subverted the guidelines provided by the Supreme Court and Centre-State Commissions and invited

²⁵ S.A.H. Haqqi, *Indian Democracy at the Crossroads*, p.257, (1986).

²⁶ N.S. Gehlot, *New Challenges to Indian Politics*, p.64-65, (2002).



the single largest party to form the government instead of the alliance which had the majority citing reasons like horse trading and defection politics. This decision perplexed some as in the case of Goa, Manipur and Mizoram, the single largest party was not given the preference to form the government unlike in Karnataka.

After the Governor invited the leader of the opposition party to form the government, the leaders of the opposition party approached the Supreme Court which ordered the floor test to be conducted within 48 hours. This order superseded the time period of fifteen days which the Governor had given to the single largest party.²⁷

Subsequently, the leader of the single largest party failed to prove his majority and had to resign within 48 hours. However, this move by the Governor of Karnataka had set a terrible precedent to give preference to the ruling party at the centre to form the government.

The Governor must be true to the oath of the office and must ensure that the person he/she invites to be the Chief Minister will be able to form a responsible and a stable government. Even Dr. B.R. Ambedkar in his speech described how a Governor should use his discretion not as “representative of a party” but as “the representative of the people as a whole of the State”.

4.5 A Case Study of the premature dissolution of the Jammu & Kashmir Assembly in 2018

In November 2018, the Governor of Jammu and Kashmir surprisingly dissolved the State Assembly²⁸ (which was in suspended animation) when two rival political parties staked claim to form a government.

The Governor, instead of forming an alternate government, decided to dissolve the Assembly citing extensive horse trading and two rival factions forming an unstable government as two major reasons behind the surprise dissolution.²⁹

The dissolution came into effect after the Governor issued a notification when the leader of the People’s Democratic Party (PDP) released a statement that the party is willing to form the government with its traditional rivals, the National Conference (NC) and Congress. The Governor was of the view that such an alliance would form an unstable government in the State and such alliance would lead to policy paralysis in the already disturbed state.

The Supreme Court has comprehensively stated that a floor test must be conducted to check the majority in the Assembly.³⁰ Furthermore, the Governor cannot shut out post-poll alliances altogether as one of the ways through which a government may be established. Moreover, unsubstantiated claims of horse-trading or corruption in

²⁷ Archis Mohan & MJ Antony, Karnataka verdict fallout: Supreme Court order a triple blow to the BJP, Elections, (May 19, 2018), https://www.business-standard.com/article/elections/karnataka-verdict-fallout-supreme-court-order-a-triple-blow-to-the-bjp-118051801475_1.html

²⁸ J&K Const., section 52

²⁹ Peerzada Ashiq, Amid contrasting claims J&K Governor dissolves Assembly, Other States, (November 21, 2018), <https://www.thehindu.com/news/national/other-states/amid-contrasting-claims-jk-governor-dissolves-assembly/article25560634>

³⁰ Id., at 20



efforts at government formation cannot be cited as reasons to dissolve the Assembly.³¹

Describing an alliance as opportunistic is fine as far as it is a political opinion but it cannot be the basis for constitutional action. This event has, once again, jeopardised the neutrality and impartiality of the office of the Governor.

5. DUAL ROLE PLAYED BY THE GOVERNOR IN A STATE

The Governor of a State has a dual role to play – as the constitutional head of the State and as the agent or representative of the Centre.

5.1 Constitutional Head of the State

The Governor is the nominal head of the State. As per the Indian Constitution, there must be a Council of Ministers with a Chief Minister at the head to aid and advice the Governor in the exercise of his functions except when he can act in his discretion.³² The Council of Ministers is collectively responsible to the State Assembly.³³ All the executive powers are exercised by the Cabinet in the name of the Governor who acts constitutionally on the advice of the Council of Ministers.³⁴ However, the Constitution specifically lays down that except in matters where the Governor is required to act in his discretion, he shall not be bound to follow the advice of the Council of Ministers, but act in his discretion. If any question regarding the exercise of the discretion of the Governor arises, the decision of the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion. The Courts do not have the

authority to question the discretionary actions undertaken by the Governor. The Study Team on Union-State Relations appointed by the Administrative Reforms Commission examined that the following functions fall within the discretionary powers of the Governor:

- i. Appointment of the Chief Minister.
- ii. Dismissal of the Council of Ministers.
- iii. Dissolution of the State Assembly.
- iv. Withhold assent to a Bill passed by the State Legislature.
- v. Right to advice, warn and recommend.
- vi. Discretionary powers of the provided to the Governor of Assam, Nagaland, Arunachal Pradesh, Sikkim, Mizoram, Tripura and Meghalaya.

5.2 Governor as the agent of the Centre

Apart from being the constitutional head of a State, the Governor also acts as the agent or representative of the Union Government. In fact, he is the only constitutional link between the Centre and the States. As his appointment is made by the President of India on the recommendation of the Prime Minister, his allegiance lies more towards the Centre. He ensures that the directives issued by the Centre to the States are carried out and the government of the State is carried on in conformity with the provisions of the Constitution. It is on the recommendations of the Governor that the President usually issues a proclamation of emergency in the State on account of the breakdown of the constitutional machinery. Even after the State is placed under President's Rule, the Governor is the chief representative of the President in the State to run the administration of the State on his behalf.

³¹ Rameshwar Prasad and Others v. Union of India, AIR 2005 SCC 625

³² Indian Const., art 163

³³ Indian Const., art 164

³⁴ Vipul Singh, Jasmine Dhillon, Gita Shanmugavel & Sucharita Basu, History and Civics, p. 251 (2013)



When the President's Rule has been imposed on a State the Governor ceases to be a constitutional head and acts as an agent of the President.³⁵

G.N. Singh, the former Governor of Rajasthan, opined that the Governor in several cases acts as a 'link' between the Centre and the States. The Governor holds a fundamental position in the State and is a thread which binds the relations of the State with the Centre.

Thus, the Governor represents the Centre in the State and the State at the Centre. That he does in his periodic reports to the President, in his meetings with the President and at the time of the Governor's Conferences. It is the Governor who aids in enhancing the reputation of the State and of the State Government at the Centre. He concentrates on the requirements and concerns of the State at the Central level.

As a matter of fact, the terms 'agent' and 'constitutional head' are two independent and contradictory things in the sense that the constitutional head is supposed to be impartial whereas an agent is always partial.

6. POSITION OF THE OFFICE OF GOVERNOR BEFORE AND AFTER 1967

The position of the office of the Governor underwent a paradigm shift post-1967 when the Congress party lost elections across the states in India. The loss in state elections indicated a weak position of the Congress for the first time since the independence of the country. This change also resulted in the formation of many regional and sub-regional

parties and subsequently, the role of the office of the Governor also underwent a change.

6.1 Position and Role of the Governor before 1967

Governors were so powerless during the 1950-67 period that some of them wondered whether the office they held was of any consequence at all. Prof. K.V. Rao states, "One of the casualties of the Nehru era is the State Governor." The role of the Governor was restricted in the Nehru era because a single party dominated the Centre as well as most of the States. During this period, the link through which the communication between the States and the Centre took place was outside the office of the Governor and, therefore, they did not have much opportunity of playing an important role. Moreover, the State governments which they headed had the fortune of having a great deal of political stability and, therefore, their role as Constitutional head of the State was also no more than purely ceremonial.³⁶

No wonder renowned leaders like C. Rajagopalachari, K.N. Katju etc took the earliest opportunity to get out of Raj Bhavan, explicitly described by one of them, as 'gilded cages'. They evidently felt that their time and potential were being ruined. Nor was this surprising in a situation of prolonged political stability through the bulk of the Nehru era, when the Congress dominated both at the Centre and all States. Consequently, a Governor had nothing exciting to do, except performing certain nominal functions, cut tapes or light lamps at functions, distribute prizes and so on.

³⁵ Pravin Kumar Jha, Political Science: University of Delhi, p.325-326, (2012).

³⁶ Verinder Grover, Political System and Constitution of India: Political Process, Government Structure and Administration, p.359-360, (1997).



Predictably, people of real worth did not accept the job while those not particularly qualified for it fell over one another to grab it because of its spectacle and privilege.

6.2 Position and Role of the Governor after 1967

The office of Governor came into great prominence post-1967 when tough situations arose due to coming into power of non-Congress governments in many States. This arduous situation started with Rajasthan and Madhya Pradesh. In both these States, the Governors, who happened to be ex-Congressmen, tried to aid the Congress Chief Ministers.

Controversies regarding the role and position of the Governor arose due to changed political scenario especially as no political party managed to get a clear majority. This provided Governors with an opportunity to exercise their discretionary powers. It was argued that the Governors were exercising their constitutional powers neither in their discretion not according to their individual judgment but according to the advice of the Prime Minister who was abusing the official power. It was evident that the decisions of the Governors, particularly in West Bengal in November 1967, and in U.P in September 1970, were taken under the pressure of the Prime Minister.³⁷

7. GOVERNOR'S POSITION: THE ISSUE OF ROLE DIFFERENTIATION

The foregoing appraisal would show that the fundamental issue concerning the office of the Governor today is not one of rehabilitation but of role differentiation. The

problem of role differentiation which could not take place and get institutionalised so far largely on account of one party dominance has assumed such severe proportions today as to become a case of crises of confidence in the political system itself.

The Governor has a dual role to play – one as constitutional head of the State and the other as an agent of the Centre. It can be argued that the expression `agent of the centre` sounds un-federal. Two premises may be developed to characterise the role of the Governor. Generally, speaking, there is no overlap between the two roles except where otherwise provided, the role of the Governor as an agent of the Centre begins where his role as constitutional head of the State ends. Moreover, it can be pointed out that there is another demarcating line in the Governor's role as his role as the constitutional head of the State has primacy over his role as an agent of the Centre as the former relates to periods of normalcy and the latter to emergency situations. If these two premises are accepted, the two roles could be easily reconciled.

It can be concluded that the Governor has two key roles to play. As a representative of the Centre in the State, it is his duty to ensure that the federal equilibrium and political stoutness are not undermined and jeopardised. In his role as the head of the State government, he has been provided discretionary powers. He is not simply a nominal head, or a passive spectator but the extent of his powers would greatly rely on the political scenario that exists in the State. If there is a great deal of political consonance in the State, the burden of the Governor is greatly reduced. If political

³⁷ P.L. Mathur, Role of Governor in Non-Congress States, p. 181 (1988).



disharmony exists in the State, the role becomes extremely crucial.

Thus, this office is of fundamental significance having a multifaceted role. The Governor is the keystone of the constitutional framework and his office ensures continuity of government and it should not be disregarded.³⁸

8. RECOMMENDATIONS OF THE ARC TO REFORM THE OFFICE OF THE GOVERNOR

The First Administrative Reforms Commission in its report on Centre-State relations pointed out that the office of the Governor is no longer ceremonial. The Governor has to tackle situations, in which certain decisions have to be taken in view of the oath of the office to preserve and defend the Constitution and the law. The ARC report recommended that the Governor must be unbiased and must ensure fair play. He must have strong faith in the constitutional structure and democratic institutions. Furthermore, the report underlined the following recommendations:

- i. A person who is appointed as a Governor should have experience in public life and administration and should be detached from party politics.
- ii. The person appointed should be ineligible for reappointment and judges should not be appointed as Governors.
- iii. The convention of consulting the Chief Minister before the appointment should be religiously followed.
- iv. The person appointed must act according to fair judgment and discretion in forwarding

reports to the President and reservation of bills for the consideration of the President.

- v. When the Governor has reason to believe that the Ministry has ceased to command a majority in the Assembly, he should arrive at a conclusion on this question by summoning the Assembly and ascertaining its verdict on the support enjoyed by the Ministry.
- vi. When a question arises as to whether the Council of Ministers enjoys the confidence of the majority in the Assembly, and the Chief Minister does not advise the Governor to summon the Assembly, the Governor may, if he thinks fit, *sou motu* summon the Assembly for the purpose of obtaining its verdict on the question.

9. THE WAY FORWARD

Far from being the fifth wheel in a coach, the prestigious post of the Governor is an esteemed social institution and constitutional necessity.

The operational aspect of the office of the Governor states that it was the involvement of the Governors in active politics of the State which made the office subject to significant public criticism. Throughout the 1950s and 1960s, there were considerable signs of this tendency, but after 1967 some of the Governors severely infringed their jurisdiction which led to public demands of their dismissal. The manner in which the power of appointing and dismissing the Council of Ministers, summoning, proroguing and dissolving the Assembly, and also of advising the imposition of President's Rule, has been used as a sad commentary on the role of some of the Governors.

³⁸ Himanshu Roy & M.P. Singh, Indian Political System, p.237-240, (2018).



The Governors in some of the States by using their authority purely for sectarian and personal ends not only deprived the office of its prestige and dignity but also brought disrepute to it.

There are numerous reasons behind the office of Governor enjoying limited respect in the eyes of experts and even public at large. For better or worse, the Governors are not seen to be the elder statesmen acting as a bridge between the Centre and the States.

The Supreme Court has explicitly stated that the governorship *“is an independent constitutional office which is not subject to the control of the Government of India.”*³⁹ In other words, the Governor of a State is not inferior or subservient to the Central Government. Again, the Supreme Court’s judgment leaves no apprehension that when the Constitution states that the Governor shall hold office *“during the pleasure of the President,”* it does not mean the whim and fancy of the President.

The Governor is a high constitutional office. The Governor takes an oath to *“preserve, protect and defend the Constitution and the law.”* A mere appointment does not make the functionary an instrument of use by the ruling party at the centre. Therefore, it is imperative that persons of proven probity and character alone are appointed to this high-ranked office.⁴⁰

³⁹ Hargovind v. Raghukul Tilak, AIR 1979 SC 1113

⁴⁰ Dr. B.L. Fadia, Indian Government and Politics, p. 526-527, (2013)