CHAPTER – III

POSITION OF THE GOVERNOR – THE CONSTITUTIONAL FRAME

The Indian Constitution is founded on the scheme of responsible government on parliamentary lines, similar to that obtaining in the United Kingdom, the Commonwealth countries, the State of Australia and the provinces of Canada. As in the Union, the government in the States is also organized on the parliamentary model. The Head of the State is called Governor, who is the constitutional head of the State as the President of India. The Chief of the State government is called the Chief Minister who is the counterpart in the State, of the Prime Minister of India. There is a Council of Ministers for each of the States as in the Union. The organisation of the State Legislature is also more or less on the model of the Indian Parliament. Thus, the State government is a true replica of the Union government within the jurisdiction of each State which helps the States to draw examples and inspiration from the working of the Union government in almost every field of activity.

The executive power of the State is vested in a Governor¹ who is appointed by the President² and who holds the office during the

¹ Constitution of India, Article 154.
² Ibid., Article 155.
pleasure of the President. The vesting of the entire executive power of the State in the Governor shows that he occupies a similar position within the State as the President does with respect to the Government of India. However, there is difference of opinion on the actual position of the Governor under the Indian Constitution. It is the contention of some that the Governor is a constitutional head, bound in all cases to accept the aid and advice tendered by the Council of Ministers. Others seem to allow him some discretionary powers, which he exercises in certain situations. It has also been said that he is not only the constitutional head of the State but also the agent of the Central government, as a consequence, bound to act in accordance with the Central directions even if they are in conflict with the advice given by his Ministers. It would, therefore, be worthwhile to see what the framers of the Constitution intended the Governor to be.

The Constituent Assembly met for the first time on December 9, 1946. On April 30, the Assembly adopted a Resolution setting up simultaneously two Committees. One was asked to consider the report of the “Main principles of the Union Constitution”. Its Chairman was Jawaharlal Nehru. The other was asked to consider and report on the

---

“Main principles of model of provincial Constitution’. Its Chairman was Sardar Patel.

B.N.Rao, constitutional adviser, issued a questionnaire to the members of the Committee. The replies of the members were not similar. While B.G.Kher envisaged real powers for the Governor under Parliamentary set up, Subborayan desired him to have only formal and ceremonial functions. Some others like, K.N.Katju were of the view that the Governor should have large executive powers on the American model.⁷

As replies to the questionnaire were received only from seven members out of twenty-five, it was not possible for the Constitutional Adviser to prepare a memorandum embodying the majority view of the Committee. An independent memorandum, therefore, was prepared by him for the consideration of the Committee.

The memorandum submitted by B.N.Rau, envisaged the Governor, for most part, the status of a constitutional head. He suggested the election of the Governor by the provincial legislature by secret vote according to the system of proportional representation by single transferable vote. In his note, appended to this clause of the memorandum, Rau discussed the advisability of having Governors either appointed by the Central government or elected by the voters of

---
the province concerned. The former could not be adopted due to the rigid scheme of federation under the Cabinet Mission Plan and the latter was not proper in view of the fact that the Governor for the most part were intended to be responsible heads, acting on the advice of the Council of Ministers.8

Rau, further suggested that the Governor shall hold office for a term of five years who may be removed from the office for misbehaviour or infirmity by a resolution of the provincial legislature supported by not less than two-thirds of the total membership of the legislature and he shall be eligible for re-election once, but only once.9

When the clauses of the memorandum came before the Provincial Constitution in its meeting on 6th June, 1947, opinion was divided between those who suggested that the Governor should, as in the United States, have complete executive authority in a province, nominating his cabinet, which would be answerable to him to the legislature and that he should be elected by the people on a system of adult franchise. Some other suggested that the Governor should be a constitutional head, acting on the advice of Prime Minister, who would be responsible to the legislature and that he should be appointed by a system of indirect election. Likewise, some members suggested that the Governor should have a wide range of authority over the provinces and that the

---

9 Clause II of the Memorandum, Ibid, p. 142.
Governor should function as a liaison between the Central government and the provincial executive and that he should be nominated by the Central government.\textsuperscript{10}

In June, 1947, Sardar Patel forwarded to the President of the Constituent Assembly the Report of the Provincial Constitution Committee. The Constituent Assembly had accepted the principles of a Model Provincial Constitution as framed by the Provincial Constitution Committee. These principles provided for the election of the Governor of every province on the basis of adult suffrage. He should hold office for a term of four years and would be liable to be removed from his office by impeachment for stated misbehaviour.\textsuperscript{11}

Further, the Model Provincial Constitution provides that the Governor was to act normally on the advice of his Council of Ministers. He was to be required to act in his discretion in a number of matters, e.g., prevention of any grave menace to the peace and tranquility of the province, summoning and dissolving of the Provincial Legislature, superintendence, direction and control of elections and appointment of the chairman and the members of the Provincial Public Service Commission and of Auditor General.\textsuperscript{12} In this respect, the Committee was broadly following the provisions of the Government of India Act, 1935. The safeguard against the abuse of his discretionary powers by...
the Governor was the fact that he was to be elected by the people. In place of the Instrument of Instructions issued to the Governor under the Act of 1935, the Committee had proposed the introduction of a schedule that would outline the conventions of responsible Government. In short, in the first place of Constitution making, the framers had visualised for the Governor broadly a role similar to that provided under the Act of 1935 with the important differences that the Governor was to be elected by the people of the province on the basis of adult suffrage.

It was soon realised that the election of the Governor was not only unnecessary but was also to some extent incompatible with the position which the Governor was expected to occupy under the Constitution, viz., as the constitutional head of a State. It had therefore, provided for the election of the Governor and endowed him with certain discretionary powers. But these provisions became anomalous when it was decided to adopt the pattern of responsible government for the unit as well. It seems that in the beginning of its career the Constituent Assembly was not quite definite about the pattern of government it was going to adopt for the country and whether the same pattern was to be prescribed for the units as well.

---

13 Ibid., The note itself states that "The Governor under the proposed Constitution is to be elected by the people so that he is not likely to abuse his discretionary powers".
14 Ibid., Clause 14.
Jawaharlal Nehru said, "One thing we have to decide at the very beginning is what should be the kind of government structure, whether it is one system where there is ministerial responsibility or whether it is the presidential system as prevails in the United States of America... We have given anxious thought to this matter and we came to very definite conclusion that it would not be desirable, first because we want to emphasise the ministerial character of the government that power really resides in the Ministry and in the Legislature and not in the president as such".16

On June 7, 1947, the Union Constitution Committee and the Provincial Constitution Committee after holding a joint meeting to determine the basic principles of the Constitution, concluded, "It would suit the conditions of the country better to adopt the Parliamentary System of Constitution, the British type of constitution with which we are familiar."17

Thus, in the initial stage of framing the Constitution, the framers of the Indian Constitution decided that the Governor should be elected by the people on the basis of adult suffrage, for it was their impression that an elected Governor would give stability to the government of province.18 This decision, says Pylee, was in conformity with the idea

---

17 Sardar Vallabhai Patel, Ibid., p. 578.
of giving each State the “Maximum autonomy” as a unit of the federation.\(^{19}\)

When the Constituent Assembly began its work towards the end of 1946, it had to draft a Constitution within the broad framework of the Cabinet Mission Plan. The approach of the Assembly was, therefore, oriented towards a federal structure in which the provinces were to enjoy the maximum autonomy and the jurisdiction of the Central government was to be limited to the basic national activities.\(^{20}\)

On 22\(^{nd}\) January, 1947, the Constituent Assembly adopted a resolution which provided for the drawing of a Constitution wherein the territories shall possess and retain the status of autonomous units together with residuary powers and exercise all powers and functions of government and administration except such powers and functions as are vested in or assigned in the Union.\(^ {21}\)

Meanwhile, the political situation of the country abruptly changed when the partition of the country became a certainty and the restriction and limitation expressed under Cabinet Mission Plan on the authority of the Constituent Assembly disappeared from August 15, 1947. The Constituent Assembly, which began its proceedings in 1946 with the idea of setting a Minimal Federation with a weak Centre, suddenly went

---


to the other extreme of establishing Maximal Federation with very strong Centre.22

As regards the scheme of electing the Governor by universal adult suffrage, the Drafting Committee felt that it was inconsistent with the system of responsible government, envisaged under the Constitution. The Drafting Committee, therefore, suggested an alternative scheme for the appointment of Governor. The Committee recommended that the Governor should be appointed by the President from a panel of four candidates to be selected by the members of the Legislature of the State in accordance with the system of proportional representation by means of single transferable vote. Some members of the Committee were strongly in favour of this alternative because they thought that "the co-existence of a Governor, elected by the people, and a Prime Minister responsible to the Legislature, might lead to friction and consequent weakness in administration.23

While stating the reason for recommending an alternative by the Drafting Committee, B.R. Ambedkar said in the Assembly,

"The Governor is not to have any functions - to use a familiar phraseology no functions which he is required to discharge either in his discretion or in his individual judgement according to the principles of new Constitution required to follow the advice of his ministers in all matters".24

When the provision pertaining to the selection of the Governor was being discussed, Brajeshwar Prasad moved an amendment proposing nomination of the Governor by the President disfavouring the panel system suggested by the Drafting Committee on the ground that:

"It restricts the choice of the President and give powers in the hands of Provincial Legislature. It is, therefore, necessary that the President should be free from the influence of the Legislature".  

H.V. Kamath opposed the panel system on the ground that:

"If the President does not chose the first nominee and he chooses the third or the fourth, the Legislature of the State will certainly have a grouse against the man chosen by the President because he has been chosen in preference to the First man".

It was also stated that when the election would be held for the panel names, groupism was bound to be generated within the party. The other factor which led the members to give up this system was the bitter experience gained in connection with the appointment of vice-chancellors of the universities. It was also stated that "it carries no responsibility of either the President or the Cabinet or the Provincial Cabinet because the responsibility here is very much divided".

The method of election by the Legislature in accordance with the system of proportional representation by means of single transferable vote suggested by the constitutional adviser was not discussed in detail.

---

25 Ibid., p. 426.
26 Ibid., p. 429.
27 Ibid.
28 Ibid., p. 432.
29 Ibid., p. 450.
and it was dropped immediately. While criticizing this system Durga Rai maintained that, "the system of proportional representation would not improve matters in any way. That would only produce the effect that it would divide the whole House into warring group."³⁰

Thus, the members of the Constituent Assembly rejected all other proposals regarding the mode of appointment of the Governor. As a result, the amendment of Brajeshwar Prasad gained majority support from the members of the Constituent Assembly. While speaking in favour of the amendment H.V.Kamath said:

"If the object of the Constitution is to have a Parliamentary or Cabinet form of Government in every State then it is patent, it is obvious that the method of choice by direct selection is absolutely inappropriate and unacceptable. It is an admitted fact that one of the essentials of successful working of the Cabinet government in a province or in the country as a whole is the existence of a fairly impartial constitutional head, who is more or less symbol or constitutional figure-head".³¹

Alladi Krishnaswami Ayyar shared similar opinion. He said,

"This Assembly has accepted the introduction of responsible government in the different states, that the Governor is merely a constitutional head of the province and that the real executive power has been vested in a ministry responsible to the lower House".³²

Some member of the Constitution Assembly felt that the selection of a Governor is more likely to come into conflict with the Chief
Minister of the province who is also elected on the basis of adult suffrage. In the opinion of H.V. Kamath:

"There will be two conflicting authorities within the State, one is the Premier, whom, under the Constitution which we are considering today, we have invested with executive authority so far as the State is concerned and the other is the Governor, who though the Constitution does not confer on him very substantial powers and functions, will arrogate much to himself, because he will say that 'I have been selected by the people of the whole of the province and as such I am person a gratia with the people and not the Chief Minister'". 33

But apart from the conflict, if there is no conflict and there is perfect agreement, supposing the exceptional happens, and he (Governor) and Prime Minister of State are completely one. Since we have provided for a certain amount of autonomy for the provincial government; it is not unimaginable said Kamath,

"That circumstances may arise if they agree in defying the Centre or the Centre may be completely blocked out from that particular province". 34

Similar fear was also expressed by K.M. Munshi:

"It was also felt very rightly that if one member of a party was elected by the adult franchise of all the citizens while the Prime Minister was there as only the leader of the majority party in the Legislature Assembly, in the event of a conflict between them, the position of the Governor may be superior to that of the Prime Minister... This possibility has to be obviated. Because, the present scheme is that the Prime Minister, who is the leader of the majority..." 35

33 Ibid., p. 428.
34 Ibid., p. 434.
party, should like the Prime Minister of England, have the controlling voice in the affairs of the province or the government”.  

But, B.R. Ambedkar did not agree that the friction could be the result of election. While arguing in the Assembly he said:

“It has been said in the course of the debate that the argument against election is that it would be a rivalry between the Prime Minister and the Governor, both deriving their mandate from the people at large. Speaking my myself, that was not the argument which influenced me because I do not accept that even under election there would be any kind of rivalry between the Prime Minister and the Governor, for the simple reason that the Prime Minister would be elected on the basis of policy, while the Governor could not be elected on the basis of policy, because he could have no policy, not having any power. Therefore... The real issue before us is not nomination or election, but what power you propose to give to your Governor. If the Governor is purely constitutional Governor with no more powers, then, I personally do not see any very fundamental objection to the principle of nomination. Moreover, if the method of election was adopted, “nobody knowing fully well what powers he is likely to have under the Constitution, would come forth to contest an election. We felt that the powers of the Governor were so limited, so nominal, his position so ornamental that probably very few come forward to stand for election”.

Doubts have also been raised in the Constituent Assembly about the indulgence of the Governor in party politics of State if the method of election were adopted, which apart from involving election expenditure, consequently leads to the separatist tendencies. I feel that Jawaharlal Nehru:

\[35 \text{ Ibid., pp. 452-53.} \]
\[36 \text{ Ibid., p. 469.} \]
\[37 \text{ Ibid., p. 467.} \]
“If we have an elected Governor that would to some extent encourage that separatist provincial tendencies more than otherwise. Therefore, in the interest of All India Unity, and with a view to encourage centripetal tendencies, it is not to take any step which might tend towards loosening the fabric of India or loosening the governmental machinery and thus producing conflicts.”

H.V. Kamath also opined that,

“Considering the Constitution as a whole, considering the powers given to the State Cabinet and the relations between the units and the Centre, I think that the lesser-most evil is this system of appointment by President”.

It is clear from the speeches of the various luminaries that the method of appointment by President was gaining ground and besides if the framers purported to establish some link with the provinces and it was possible through this method. Jawaharlal Nehru was very critical of the fact that “the elected Governor would have fewer common links with the Centre”.

The Constitution makers, thus, while disclaiming any idea of making the Governor as an agent of the Government of India, have visualized the Governor to play the role of providing a link between the Centre and the Units and avoiding a clash between the two. While making this point clear to the Constituent Assembly T.T. Krishnamachari said,

---

38 Ibid., p. 454.
39 Ibid., p. 426.
40 Ibid., p. 455.
41 Ibid., p. 430.
42 Ibid., p. 455.
"I would at once disclaim all ideas, at any rate so far as I am concerned, that we in this House want the future Governor who is to be nominated by the President to be in any sense a agent of the Central Government. I would like that point to be made very clear, because such an idea finds no place in the scheme of government we envisaged for the future".43

Therefore, the Constitution-makers felt the need to have an impartial constitutional head in the provinces, who would bring to bear a detached outlook rather than a person, who was involved in the party politics of the province. Speaker after Speaker pointed out the need for a Governor, who would act as a “lubricator” who would “throw oil over troubled water”, who would be “a harmonious element in the Constitution”. This position could be filled better by a person, chosen by the Government of India than by one, who was elected on a party ticket by the provinces as a whole or by the Legislature.44

Keeping in view the said facts, the Constituent Assembly accepted the amendment moved by Brajeshwar Prasad. While defending the appointment of Governor by the President Alladi Krishnaswami Ayyar said,

"That the Governor might occasionally have to use his extraordinary powers and this point is more in favour of nomination rather than in favour of election".45

Further he said,
"If the choice is left to the President and his Cabinet, the President may, in conceivable circumstances, with due regard to the conditions of the province, choose a person of undoubted ability and position in the public life at the same time has not been mixed up in provincial party struggle or factions".46

It was further desired that the man to be appointed would be from outside and the convention would grow up of the Government of India consulting the provincial Cabinet.

Ultimately, under the Constitution, the Governor emerged as constitutional head appointed by the President for a term of five years, and holds office during the pleasure of President. This can be hardly regarded as a change for the better. There is every chance of the appointment being dictate by the partisan considerations as the President in making appointment would be advised by the Federal Cabinet which must necessarily belong to a political party. Even assuming the selection is made from the best of motives and free from all party consideration, which is too much to expect, still a cloud of suspicion would be attached on the neutral character of the office.47

Whatever may be the imperfections of the provisions, the intentions of the makers of the Constitution are never in doubt. It may be recalled that originally the Draft Constitution proposed an elected Governor for the province, but it was substituted later on by the provision for a nominated one. There were loud protests from the

46 Ibid., p. 431.
protagonists of provincial autonomy, but assurances were given by many including Jawaharlal Nehru and B.R. Ambedkar, that it was only a mode of appointment and no principle was involved in this change.\(^{48}\)

Thus, Nehru was quite clear in his mind that the Governor appointed must be acceptable to the government of the province otherwise, he would not be able to function there.\(^{49}\) Alladi said, “there is no doubt that there would be a convention of the Government of India consulting the provincial Cabinet in the selection of the Governor and that the Cabinet at the Centre would also be guide by the advice of the provincial Cabinet.\(^{50}\) T.T. Krishnamachari was equally firm about the convention of consultation. He said, “Our idea is that the Governor will be appointed in the first place on the advice of Prime Minister who, in turn, will consult the Chief Minister concerned, which particular person will have a veto and I think convention has already grown in that direction.\(^{51}\) It was on this basis that the provision for the appointment of the Governor by the President was adopted by the Constituent Assembly.

Such a convention, it was hoped, would result in cordiality in the relation between the Governor and Chief Minister on the one hand and the Centre and the State on the other. During Nehru’s Prime Ministership this convention was by and large followed. Subsequently,


\(^{49}\) C.A.D., Vol. VIII, p. 455.


this convention was thrown to the winds and Governors were forcibly thrust on unwilling States despite their protests. For instance, Nehru restrained not only nominating Governors but also Chief Ministers to the States. In 1952, Governors’ appointments were made in consultation and concurrence with the State governments. Sometimes, he said, “I have had to send two, three, four or five name to the State government; the name of the Governors came back, and I had to look for another”. Also, he did not remove Chief Ministers at will. When he was told that in Bihar the Governor and Chief Minister on a collusion course, he said he could not do anything to the Chief Minister as he was an elected person but the Governor could, perhaps, be changed as this matter was within the purview of the Central government.52

In the post 1967 period, all political parties that came to power at the Centre are guilty of having appointed Governors without consulting the Chief Ministers of the State concerned. This problem has become even more obvious in those State where a different political party or alliance is in power as compared to the Centre. In 1990, the then Chief Minister of Karnataka, Veerendra Patil expressed unhappiness at the Centre over the appointment of the Governor without consulting him.53

In Bihar the ruling Rashtriya Janata Dal criticized the BJP led

---

government for appointing Sundar Singh Bhandari as the Governor without consulting the State government. These are some examples.

In such cases, some damage has been done to the federal principles, and it becomes difficult to establish mutual trust and harmonious relation between the Governor and his Council of Ministers. The Governor is likely to be regarded as an imposition and an agent of the Central government. Instead of serving as a useful link between the Centre and the State and contributing towards a smooth working of the federal system, he becomes an object of suspicion to the State ministry.

The violation of this convention of consulting the Chief Minister before appointing a Governor has essentially been caused by the fact that the Central government has attempted to use the office of the Governor to further its political interests vis-a-vis the States. It often appears, as if a Governor is specifically sent to State, especially when different parties are in power at Centre and the State, with the specific intention of destabilizing its early dismissal. As a result, the norms which were required to be borne in mind while selecting the individuals to occupy this office have been thrown to the winds. It was the fond hope of the framers of the Constitution, that eminent people from various walks of life, not politicians, would be appointed as

---

54 Deccan Herald, April 23, 1998.
Governors. The intention was that such individuals, held in high esteem, would bring honour and glory to the office of Governor.

The question also arises that can the appointment of a person to the office of the Governor in breach of constitutional convention be challenged in a Court of Law? This is extremely doubtful. It is, of course, true that constitutions are not worked by a mechanical or literal application of their provisions. There are many things which are not written in the Constitution, yet the exercise of power or discharge of constitutional functions is governed by constitutional conventions—"the unwritten maxims of the Constitution". According to Sir Ivor Jennings constitutional conventions provide the flesh which clothes the dry bones of the laws, they make the legal Constitution work, they keep it in touch with the growth of ideas. A Constitution does not work itself, it has to be worked by men. It is an instrument of national co-operation, and the spirit of co-operation is necessary as the instrument.

Besides, conventions are "rules of constitutional behaviour which are considered to be binding by and upon those who operate the Constitution", and that interpreting the Constitution one should keep in mind the prevalent conventions, as they help the real purpose and function of the constitutional provisions in question. Nonetheless.

---

57 Ibid.
conventions are not enforceable in Courts of Law, they are non-legal rules regulating the way in which legal rules shall be applied.\textsuperscript{58}

The controversy whether consultation with the Chief Minister before appointing a Governor means the framers' consent is not easy to resolve. If it is merely consultation and not the consent of the Chief Minister or the State government then there is no use of it. And if the consent of the Chief Minister is necessary, the appointment falls in his hand and not in the hands of the Central government. Whatever may be the case, it can be said that although the Chief Minister has no right to refuse the appointment of a Governor to his State, yet this convention certainly goes to satisfy the provincial politicians to some extent. Besides, it can also be said that, of course, the Chief Minister is entitled to the courtesy of being informed who the Governor of his State is going to be. It was because of such consideration that all constitutional \textit{Pandits} have opined that State Chief Ministers should necessarily be consulted before appointing Governors.\textsuperscript{59}

Governorship has also become an office of political accommodation for political rejects, trouble shooters, defeated and defecting politicians. A more serious development is that many who have occupied Governorship have subsequently returned to active politics.

\textsuperscript{58} \textit{Ibid.}
In 1985 Prime Minister Rajiv Gandhi had replaced Punjab Governor Arjun Singh and Shankar Dayal Sharma, who were asked to leave Andhra Pradesh to make room for former Union Minister of State Kumudben Joshi, who was generally considered to have been reduced to a political non-entity. On the other hand, three times Maharashtra Chief Minister and a former AICC General Secretary, Vasantadada Patil had been appointed Rajasthan Governor.

Arjun Singh was very keen to return to his home State because he was worried that his continuous absence from the State might erode his political base.60

Romesh Bhandari was appointed Governor of Uttar Pradesh. He was well-known Congress leader. He lost Lok Sabha seat from south Delhi in 1991. He was regarded as failed politician.61

On some occasions in the past, the change of guard at New Delhi had brought in its wake gubernatorial changes. With the BJP coming to power, this sad chapter has repeated itself.

The BJP led government appointed Suraj Bhan as Governor of Uttar Pradesh. A practising politician Bhan was known for his close link with the BJP and RSS. He was Deputy Speaker of Lok Sabha. He lost parliamentary election from Ambala constituency in Haryana. Rajani Rai, nominated for the Lieutenant Governorship of Pondicherry.

is little known outside Nagpur but has close links with Sangh Pariwar. Bhai Mahavir, a party activist, has been made Governor of Bihar and Vijay Kapoor, who had helped draft the party manifesto, made Lieutenant Governor of Delhi. Lt. Gen. Joacob, a member of the BJP’s Ex-servicemen’s Cell, made Governor of Goa. On the top it, the BJP led government force the Governors of Goa, and Mizoram to quit just to accommodate its own leaders. It was pointed out at the forum provided by the then President, Shankar Dayal Sharma, to political parties and Governors that the Governor was expected to rise above partisanship, exercise caution and remain honest to the spirit of the Constitution. Yet the appointment of several committee members of the Sangha Parivar to sensitive positions in important State has conveyed the impression that political loyalty rather than constitutional correctness has guided the decisions.

The need of the hour is to appoint the right kind of persons as Governors. Men and women of some distinction and experience whose objectivity and independence is beyond question, rather than old party hawks and others who are in search of a temporary base from which to re-enter politics at the first opportunity. If this is done, the Governor will not act as mere tools of the Central government but will function independently. Men of unimpeachable integrity and impartiality will certainly inspire public confidence and restore the dignity of the office.

---

62 Same Old Games with New Faces, Deccan Herald, April 19, 1998.
of the Governor. In order to achieve this goal serious thought must be
given to the question as to whether it is prudent to continue with the
existing arrangement of the Union Council of Ministers advising the
President on gubernatorial appointments.

The Administrative Reforms Commission has rightly pointed out
that "the attitude of the Centre towards these appointments should
undergo a radical change. Instead of these posts being treated as
sinecure, they should be given due recognition as vital offices in the
federal fabric of Indian administration. This should result in patronage
and politics giving away to merit as the test for selecting Governors."

The Commission suggested that a person to be appointed as a
Governor should be one who has a long experience in public life and
administration and can be trusted to rise above party prejudices and
predilections. He should not be eligible for further appointment as a
Governor after the completion of his term. Further, the Commission
recommended that the convention of consulting the Chief Minister
before appointing a Governor is a healthy one and should be
continued.

In response to the demand by various opposition leaders, the
Centre appointed the Sarkaria Commission to examine Centre-State

65 Report of the Administrative Reforms Commission on Centre-State Relations,
June 1969, pp. 22-23.
1987, wherein it gave comprehensive guidelines for the appointment of Governors. It has stipulated that a person to be appointed as Governors should satisfy the following criteria; he should be eminent in some walks of life; he should be a person from outside the State; should not be intimately connected with the local politics of the State; and he should be a person who has not taken too great a part in politics generally, and particularly in the recent past. It also suggested that a politician from the ruling party at the Union should not be appointed as the Governor of a State which is being run by some other party or a combination of other parties.

In selecting a Governor in accordance with the above criteria, persons belonging to the minority groups should continue to be given a chance.

The Commission has also suggested that Article 155 of the Constitution should be suitably amended to prescribe consultations with the State Chief Ministers on the appointment of the Governor. In this way, the Commission wants consultations with Chief Ministers on the appointment of Governors to be written into the Constitution. The Commission suggested that the Prime Minister may consult the Vice-President and the Speaker of the Lok Sabha in selecting Governors, and shall consult the Chief Minister concerned in terms to be prescribed by

---


a suitable amendment to Article 155. The consultation should be confidential and not a matter of Constitution obligation.\textsuperscript{68}

The National Front government created Inter-State Council in 1990 under the provision of Article 263 to investigate and resolve multi-sectoral inter-governmental disputes. The Inter-State Council consists of the Prime Minister as Chairman, a few senior Union Ministers and Chief Ministers of all the States. The fifth meeting of the Standing Committee of the Inter-State Council agreed that the Governor should not be given a second term and that should be expressly provided under the Constitution itself as provided to the members of Public Service Commission.\textsuperscript{69}

The meeting chaired by the then Union Home Minister Indir\textsuperscript{1} Gupta, suggested that the Union Cabinet would be obliged to give an explanation to the Governor if his tenure as cut short. The members also suggested that the Centre shall make a statement before Parliament giving reasons for recalling the Governor.\textsuperscript{70} However, J.R.Siwach has rightly pointed out that merely having a fixed tenure will not make the office of the Governor independent. He pointed out that more than the powers of the President to cut short their period of office, it is the possibility of extension in the same office for a future period that has

\textsuperscript{69} Federal Features Gain Prominence, Deccan Herald, November 12, 1997.
\textsuperscript{70} Ibid.
undermined the independence of Governors. The expectation of a second term has made many Governors willing instruments in the hands of the party in power at the Centre. Therefore, it is necessary that the practice of offering a Governor another term of office in the same or another State be forbidden by law. The appointment of his successor should be announced before the expiry of his term and the method of his removal should be prescribed by the Constitution which should be the same as in the case of the judges of the Supreme Court. Once appointed a Governor, should not be transferred from one State to another like a civil servant.

The Sarkaria Commission with a view to safeguard the independence of the Governors has recommended that the Governor's tenure of office be fixed for five years and that he should not be disturbed except very rarely, and that too, for extremely compelling reasons. Save where the President was satisfied that in the interest of the security of State it was not expedient to do so, the Governor, whose tenure was proposed to be terminated before the expiry of the normal term of five years, should be informally apprised of the grounds of the proposed action, and afforded a reasonable opportunity for showing cause against it.

---

72 Gani, H.A., op. cit., p. 36.
73 Hegde, Ramkrishna, op. cit.
It is desirable that the President gets the explanation, if any, submitted by the Governor against his proposed removal from the office, examined by an advisory group consisting of the Vice-President of India and the Speaker of the Lok Sabha or a retired Chief Justice of India.\textsuperscript{74} After receiving the recommendation from this group, the President may pass such orders in the case, as he may deem fit.

The Sarkaria Commission has observed that when, before the expiry of the normal term of five years, a Governor resigns or has his tenure terminated, the Union government may lay a statement before Parliament explaining the circumstances leading to the ending of the tenure. In order to ensure the independence of the Governor, it is necessary that the end of his fixed tenure, he be given reasonable post-retirement benefits for himself and for his surviving spouse.\textsuperscript{75} Strict adherence to these norms certainly would go a long way in restoring the credibility of the Governor’s office.

\textsuperscript{74} \textit{Ibid.}
\textsuperscript{75} Gani, H.A., \textit{op. cit.}, p. 37.