CHAPTER VI

Sarkaria Commission and National Commission to Review the Working of Constitution (NCRWC)

The makers of Indian Constitution wanted to keep the office of Governor less important and decisive in the State administration. To facilitate the smoother Centre-State relations and uphold the federal principle, as envisaged under the Constitution, the Governor was expected to exercise all his powers in accordance with the aid and advice of the Council of Ministers. The makers were not unaware of the likelihood of such situations cropping up in future that would necessitate use of Governor’s discretion. But these situations were taken to be occurring ‘rarely’ and the Governor was thought of as a sagacious personality who would use his discretion only for the purpose of defending the constitutional values. As had already been noted in the preceding chapters, the architect of the Indian Constitution, Dr. Ambedkar repeatedly emphasised that position of the Governor was meant to be similar to that of the President¹, where both would function as nominal heads, the real powers being vested in the office of Prime Minister at Centre and that of Chief Ministers in the States. In the initial stages, the Constitution worked as per the expectations of the framers. Controversial role of Governor came into limelight first in 1959 when the President’s rule was imposed in Kerala. It was, however, ignored as an aberration in what was otherwise a largely smooth pattern of constitutional scheme². The situation began to change after 1967 elections when the opposition parties replaced the Congress in some States. Even at the Centre the position of the Congress became
It was under these circumstances that, thanks to the iron-hand leadership of Indira Gandhi, the Congress started using the office of Governor for creating difficulties for the opposition-ruled States. In public perception, Governor emerged as an “agent of the Centre”, pitched against the duly elected State Governments to execute a nefarious agenda. Protests against Governors’ partisan actions by a number of opposition parties within States became frequent after sixties.

It was in this context that the need to review of the role of Governor was felt. A plethora of committees and commissions was subsequently appointed, though not necessarily dealing exclusively with the role of Governor, which came up with its reports containing myriad recommendations, some of which proved effective in streamlining the conduct of Governor, while some were just redundant.

The first one was the Report of Administrative Reforms Commission (1969) that has a chapter entitled “Role of Governors”. Its recommendations are mainly regarding the role of Governor in the situations in which Chief Minister loses majority. In 1969, the Government of Tamil Nadu also constituted a “Centre-State Relations Inquiry Committee”, headed by Justice P.V. Rajamannar. Its report, published in 1971, reflected the ‘Statist’ as against ‘Centrist’ outlook on the key areas of Centre-State Relations. It made some useful recommendations about the role of Governor. Report of the “Committee of Governors”, which was headed by a former Governor and Civil Servant, Bhagwan Sahay, was also published in 1971. It largely dealt with
role of Governor in appointing Chief Minister and Ministers, summoning and dissolving the Assembly and imposition of President’s rule.

Even as these committees recommended the necessity of a drastic change in the ‘political mindset’ that treated Governors as employees of Centre, there appeared to be hardly any takers amongst the powers that be. First, the Congress started misusing the office of Governor after 1967. Janata Party that came to power at the Centre in 1977 continued this undesirable trend to intimidate the Congress Government in the States. Therefore, no matter how useful recommendations these committees made, they “did little to reconcile the severely strained Centre-State relations.”

Sarkaria Commission Report (1987) was a fairly comprehensive attempt at plugging the loopholes in Centre-State relations. Constituted in 1983, it terms of reference were to “examine and review the working of the existing arrangements between the Union and States in regard to powers, functions and responsibilities in all spheres and recommend such changes or other measures as may be appropriate.” The Commission prepared an exhaustive report of about 1600 pages with 247 specific recommendations. Despite its bulkiness, however, the report betrayed a conservative outlook. “By and large, it recommended status quo in the Centre-State relations, especially in the areas relating to legislative matters, role of Governors and use of Article 356.” The Government implemented some of its recommendations. The importance of this report, however, lies in the fact that it
substantially influenced the judicial opinion as is evident from the Bommai and subsequent judgements of the Supreme Court and various High Courts.

After Sarkaria Commission, the “National Commission to Review the Working of the Constitution” (NCRWC, 2002) released two Consultation Papers – “Institution of Governor” and “Article 356”, wherein it gave its recommendations regarding the role of Governor. Justice Sarkaria was one of the members of NCRWC. Its recommendations as contained in the Consultation Papers are quite intrepid to begin with. However, by the time the final Report of NCRWC came out, the tone and content of its recommendations were substantially watered down.

In April 2007, the Government constituted yet another Commission, the Punchi Commission, headed by Justice Madan Mohan Punchi, to study the Centre-State relations in the changed context. The Commission has reportedly already submitted its recommendations by way of a seven-volume report to the Government. While its recommendations are yet to become public, what has emerged from a section of media is that the Commission has made some important recommendations, one of which includes abolition of the post of Chancellor accorded to the State Governors, as, in the changed times, such appointments appear to have lost their importance.

Recommendations of Administrative Reforms Commissions, Rajamannar Committee and Committee of Governors have been mentioned in appropriate contexts in the preceding chapters. In this chapter, an attempt is made to examine in
detail the recommendations of Sakaria Commission and NCRWC and their impact on the role of Governor.

Appointment of Governor

After exhaustively analysing the position and role of Governor in the Indian Constitution, Sarkaria Commission says that Governor is a very important factor in the Centre-State relationship - a “Linchpin of the Constitutional Apparatus.” This is because all executive actions of the State Government are expressed to be taken in his name. He chooses and appoints the Chief Minister in his discretion, on the criterion that the latter should be able to form a Ministry commanding majority support in the Assembly. Without his assent, no Bill can become law. No Money Bill can be introduced in the State legislature without his prior authorisation. Without his orders, the House or Houses of State legislature cannot be summoned or prorogued. It is he who orders dissolution of Legislative Assembly, sometime in his discretion when satisfied after exploring all alternatives that there is no person commanding majority support in the Assembly to form a Council of Ministers. However, despite this office being so crucial, the Commission is pained to note that “proper persons are not chosen as Governors.”

The criticism relating to Governor's office revolves around the following areas:

- Discarded and disgruntled politicians from the party in power in the Union, who cannot be accommodated elsewhere, are appointed as Governors. Such
persons, while in office, tend to function as agents of the Union Government rather than as impartial constitutional functionaries.

- The number of Governors who have displayed the qualities of ability, integrity, impartiality and statesmanship has been declining.
- Persons resigning from the office as Ministers have been appointed as Governors\(^8\).

The Commission notes that in view of the above criticism, which is not inappropriate, a person to be appointed as Governor must satisfy the following criteria:

I. He should be eminent in some walk of life.

II. He should be a person from outside the State.

III. He should be a detached figure and not too intimately connected with the local politics of the State; and

IV. He should be a person who has not taken too great a part in politics generally and particularly in the recent past.

In selecting a Governor in accordance with the above criteria, persons belonging to the minority groups should continue to be given a chance as hitherto\(^9\).

One may note that with the possible of exception of the last recommendation, all other recommendations are a rehash of the debates of the Constituent Assembly.
The Commission has been emphatic on the need to adhere to the convention of Union Government consulting the State Chief Minister while appointing the Governor. This is because the personal rapport between the Chief Minister and the Governor of the State is necessary for smooth working of parliamentary system. If the Chief Minister has certain reservations about the particular person being appointed as Governor, he must have a chance to voice them before such an appointment is made\textsuperscript{10}. The Commission points out that based on general observation as well as from the complaints received from various Chief Ministers, it appeared that such consultation has not been taking place in recent years. The Commission therefore recommends that since the practice of consultation is not proving effective as a Convention, it should be prescribed in the Constitution itself and Article 156 be suitably amended for the purpose\textsuperscript{11}.

Strangely enough, even after submission of Sarkaria Commission Report, Rajiv Gandhi Government appointed six Governors to various States in February 1998 without prior consultation with the Chief Ministers\textsuperscript{12}.

The Commission rejected three suggestions proposed by different bodies and individuals in respect of the appointment of Governor:

- A National Presidential Council should be set up to advise the President on matters of national interest, inter alia, for selection of persons to be appointed as Governors.
- Appointment should be made by the President on the advice of the Inter-Governmental Council.

- Leaders of the opposition parties in Parliament should be consulted.

The Commission felt that the above-noted suggestions would end up politicising the office of the Governor. Instead, it recommended that Vice-President of India and the Speaker of the Lok Sabha should be consulted by the Prime Minister in selecting a Governor and the consultation should preferably be confidential. Although the recommendation sounds good, it is difficult to understand in what capacity the Vice President and Speaker can change the decision of Prime Minister if he is intent upon going ahead with it.

NCRWC agreed with major recommendations of the Sarkaria Commission with respect to the appointment of Governor. However, it made two important additions in this context in its Consultation Paper:

1. The term of office, viz., five years, should be made a fixed tenure;

2. The provision that the Governor holds office “during the pleasure of the President” be deleted.

But in its final report, the tone of NCRWC mellowed down and it suggested that power of the President to appoint the Governor should not be diluted. The Chief Minister of the State must however be consulted before such an appointment.
Removal of Governor

The term of Governor’s office is five years, but President can remove him anytime. Sarkaria Commission notes that between 1947 and 1986, nearly 2/3rds of the Governors could not last their full term. The Commission did not find a suggestion appropriate that the procedure to remove a Governor should be along the lines of the procedure meant for the removal of Supreme Court judge. The argument of the Commission in this regard is that the functions and duties of a judge and a Governor are vastly dissimilar in nature. Therefore, there cannot be similar method of removal in case of both. The Commission, however, agreed that some safeguard against the arbitrary removal of Governor needs to be devised. It stressed that the President’s pleasure on which the tenure of Governor depends should not be withdrawn without the cause shown. There should be some procedure, which gives the Governor a chance to explain his conduct. A Governor should normally be informed about the grounds of his removal. If he has any objection, he may submit his explanation, which should be examined by an Advisory Group consisting of Vice President of India, Speaker of Lok Sabha or a retired Chief Justice of India. The President may pass the order as he deems it fit after getting the recommendation of the Advisory Group.

Sarkaria Commission showed a grave concern about the conduct of Governors in lobbying for political appointments. Such an attitude often hampers the impartial judgement of a high constitutional authority such as Governor’s. The
Commission notes that if Governor is given some equivalent or higher constitutional office after the completion of his term, it is not objectionable. However, he should not be eligible for any office of profit under Union or State Government and should not return to active politics. And if such is the case, the Government must seriously think about giving him good post-retirement benefits. A person holding such a high office should necessarily have adequate means of livelihood befitting his stature.

NCRWC had made a bold recommendation of impeachment regarding removal of the Governor in the Consultation Paper:

“Provision be made for the impeachment of the Governor by the State Legislature on the same lines as the impeachment of the President by the Parliament. (The procedure for impeachment of the President is set out in Article 61.) Of course, where there is no Upper House of Legislature in any State, appropriate changes may have to be made in the proposed Article since Article 61 is premised upon the existence of two Houses of Parliament.”

However, the Commission dropped it in its final report.

Discretion in Appointment and Dismissal of Chief Minister

The major controversies associated with the Governor relate to his action in appointing and dismissing the Chief Ministers. The problem arises when no party secures a working majority in the Assembly. In such a case, Governor has to go by
his judgement in inviting the leader who the Governor thinks is most likely to command the majority in the Assembly. Sarkaria Commission reposed a greater faith in the existing mechanism in this regard – Governor’s subjective judgement – rather than accepting the suggestion that the power to select the Chief Minister of the State should be vested in the Legislative Assembly. The Commission recommended that when no party secures the working majority, the Governor should select a Chief Minister from amongst the parties or groups in the order of preference:

1. An alliance of parties that was formed prior to the Elections.
2. The largest single party staking a claim to form the government with the support of others, including “independents.”
3. A post-electoral coalition of parties, with all the partners in the coalition joining the Government.
4. A post-electoral alliance of parties, with some of the parties in the alliance forming a Government and the remaining parties, including “independents” supporting the Government from outside.

The Commission here gives a greater importance to the pre-poll alliance as this is its first recommendation in the order of preference. However, Commission’s attempt at distinguishing between pre-poll and post-poll alliances was received critically in some legal quarters. “It was the Sarkaria report that invented the distinction between pre-poll and post-poll alliances. Worse, it provided an opening for toppling State governments, knowing fully well that this
perversion, unwarranted by the Constitution, would be used by the Centre as it
did in 1984 in Andhra Pradesh and Kashmir. Nonetheless, the report gave it a
sanction in 198722."

Sarkaria Commission is vociferous in its recommendation that Governor
should not dismiss Chief Minister without allowing him the test of strength on the
floor of the House23. If the Assembly is not in the session at the time when it
appears to the Governor that Ministry has lost majority, he should advise
summoning of Assembly as early as possible. If the Chief Minister dithers, the
Governor may himself summon the Assembly for the purpose of testing the
strength24. In recommending this, the Commission says that “arid legality apart, it
is a matter of constitutional propriety.” But one may argue that “dismissal of
Ministry is a matter that goes beyond constitutional propriety; it concerns legality,
and the legally nowhere in the world is this kind of constitutional practice to be
found that Governor can summon the Assembly in the absence of Chief
Minister’s advice25.”

As regards the date of summoning the Assembly, the Commission says that
Governor should give reasonable time to the Chief Minister. The reasonable time
here means between 30 to 60 days26. By and large, emphasis of the
Commission has been on the fact that floor test should be a mandatory criterion
for dismissing a Ministry and Governor should exhaust this possibility before
coming to a vital decision of dismissing the Chief Minister. This recommendation,
it may be mentioned, proved extremely influential in changing the course of judicial thinking in the country. The Apex Court exclusively referred to it while delivering the landmark judgement in the famous Bommai case in 1994.

On the issue of dissolving the Assembly the Commission says that Governor should go by the advice of the Ministry if it enjoys the majority in the Assembly. It means if Ministry, which is in majority, wants to seek a fresh mandate and advises the Governor to dissolve the Assembly, the Governor should oblige. The question is if Ministry is already in majority, why it would want to seek a fresh mandate in first place. A Ministry would recommend the dissolution only when its majority becomes doubtful. This paradoxical issue has not been properly addressed.

The Commission is in favour of retaining Governor’s discretionary powers. “We are of the opinion that the discretionary power of the Governor as provided in Article 163 should be left untouched. It is neither feasible nor advisable to regulate its exercise or restrict its scope by an amendment of the Constitution.” However it cautions that the Governor should exercise his discretion in public interest, not arbitrarily, and so as to sub-serve the purpose for which discretionary power has been conferred.

**Article 200 and 201**

Under Article 200 the Governor has power to assent to the Bill, withhold it or reserve it for the consideration of the President. If Bill is reserved for the assent
of the President, under Article 201, he can give his assent to it or withhold it. These two Articles are meant to ensure uniformity of legislation between Centre and States. However, if they are used arbitrarily, it may adversely affect the legislative powers of the State and consequently on the federal principle enshrined in the Constitution. There has been a complaint that often Bills had been reserved for the consideration of the President to create hardship for the State Governments; therefore, this Article be amended to ensure that Governor should not withhold his assent to any such Bill that relates to the subject in State List. Besides, there should be a three-month time limit for a Bill reserved for the consideration of the President. There is also a view that under Article 200, the Governor must exercise his powers only with the advice of the Council of Ministers. Sarkaria Commission says that although Governor must act in accordance with the advice of the Council of Ministers in exercising his powers under Article 200, he may also act in his discretion if he finds that provisions of the Bill are patently unconstitutional, endanger the sovereignty of the nation or violate the fundamental rights

**NCRWC on Article 200**

In the view of NCRWC Consultation Paper, the power to withhold assent appears to be wide and unguided power. The Governor is an appointee of the President (Central Government). He is not elected by the people of the State or by their representatives. In such a situation, the legitimacy of this power, which
empowers him to undo the will of the Legislature by just declaring that he is withholding his assent, is open to question\textsuperscript{30}.

NCRWC notes that the Governor's power to accord or withhold assent and the power to return the Bill to the Legislature for reconsideration (with or without suggestions) as well as the power to reserve the Bill for the consideration of the President (except perhaps in situations where such reserving is obligatory by virtue of the provisions of the Constitution) has to be exercised by the Governor on the advice of his Council of Ministers and not in accordance with the instructions received by him from the Government of India and also to establish that these are not his discretionary powers\textsuperscript{31}.

NCRWC is critical of the trend whereby the Governor has been found to be acting according to the instructions of the Home Minister in the exercise of his powers under Article 200. This becomes evident especially in the cases where the State Government belongs to a party or group different from the one at the Centre. In such cases, there is a pressure from Home Ministry on the Governor, which he is likely to cave in to, thus bypassing the advice of Council of Ministers of the State. “This is clearly an undemocratic exercise of power by the Governor\textsuperscript{32}.”

NCRWC Consultation Paper is more forthright and precise than Sarkaria Commission in its recommendations regarding Article 200:
(a) Prescribe a time-limit - say a period of four months - within which the Governor should take a decision whether to grant assent or to reserve it for the consideration of the President;

(b) Delete the words “or that he withholds assent therefrom”. In other words, the power to withhold assent, conferred upon the Governor, by Article 200 should be done away with;

(c) if the Bill is reserved for the consideration of the President, there should be a time-limit, say for three months, within which the President should take a decision whether to accord his assent or to direct the Governor to return it to the State Legislature or to seek the opinion of the Supreme Court regarding the constitutionality of the Act under Article 143 (as it happened in the case of Kerala Education Bill in 1958);

(d) When the State Legislature reconsiders and passes the Bill (with or without amendments) after it is returned by the Governor pursuant to the direction of the President, the President should be bound to grant his assent;

(e) To provide that a “Money Bill” cannot be reserved by the Governor for the consideration of the President;

(f) Or perhaps it may be more advisable to delete altogether the words in Article 200 empowering the Governor to reserve a Bill for the consideration of the President except in the case contemplated by the second proviso to Article 200
and in cases where the Constitution requires him to do so. Such a course would not only strengthen the federal principle but would also do away with the anomalous situation, under which a Bill passed by the State Legislature can be ‘killed’ by the Union Council of Ministers by advising the President to withhold his assent thereto or just by ‘cold-storaging it’.

The NCRWC concludes its recommendations with the following words:

“The changes suggested by us in Articles 200 and 201 seem essential if the arbitrary action on the part of the Governors is to be checked. It is necessary to invest the office of the Governor with the requisite independence of action and to rid them of the bane of ‘instructions’ from the Central Government. It is necessary to make him the Governor of the State in its full and proper sense and to enable him to live up to his oath truthfully. His loyalty must be to the Constitution and to none else and his commitment to the well-being of the people of his State. He must command respect by his conduct. Only then any advice given by him will be respected by the Council of Ministers and the Legislature.”

However, the mellowed down final Report of the Commission dropped everything except that the time-limit for the Governor to assent to or reserve a Bill should be six months and that of President in returning Bill to Legislature should be three months.
Cold storage is, however, usually the fate of the Commission’s reports in India. National Commission to Review the Working of the Constitution was constituted in 2002 when the NDA Government was in power. When Congress came into power in 2004, nothing was ever heard about this Commission or its recommendations. Sarkaria Commission was constituted by the Indira Gandhi Government in 1983. However, immediately after the Commission gave its recommendations, Rajiv Gandhi Government, in a clear-cut violation of these recommendations, imposed President’s rule in Tamil Nadu, Nagaland, Mizoram and Karnataka during the period from 1988-8936.

Notes & References

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6 Sarkaria Commission Report, op. cit., Para-4.5.03
7 Ibid, Para-4.6.01
8 Ibid, Para-4.6.02
9 Ibid, Para-4.6.09
10 Ibid, Para-4.6.17
11 Ibid, Para-4.6.25
13 Sarkaria Commission Report, op. cit., Para-4.6.33
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16 Sarkaria Commission Report, op. cit., Para-4.7.01
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32 Ibid, Para-8
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34 Ibid, Para-31
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36 H.A. Gani, op. cit. P-32