CHAPTER III

Governor: Appointment and Removal

Article 153 of the Indian Constitution provides for the appointment of the Governor as the head of the State. Article 168 says, there shall be a legislative assembly (in the State) consisting of Governor and one or two houses. Article 154 vests all executive powers of State in the office of Governor. According to Article 166, all executive actions taken in the State are expressed in the name of the Governor and in accordance with the rules of business prescribed by the Governor. There cannot be an executive or a legislature of State without Governor.

According to Article 156, the Governor shall hold the office during the pleasure of the President. The term of Governor’s office is five years, although he may be removed before that by the orders of the President without giving any reasons. The President’s order removing the Governor cannot be challenged. The Governor may also put in his papers before the expiry of his term in which case he submits the resignation to the President.

In keeping with the 7th Constitutional Amendment Act, one person can be appointed as the Governor of more than one State. For example, Mr. Sri Prakasa was the Governor of more than one State. Mr. B.K. Nehru acted as Governor of more than five States simultaneously\(^1\).
The Constituent Assembly accepted the idea of having a nominated Governor instead of an elected one after prolonged deliberations. Finally the Assembly agreed to have a Governor appointed by the President by a warrant under his hand and seal, which is now contained in the Article 155 of the Constitution. The framers of Indian Constitution wanted to have an impartial Governor who was not given to political ties or party loyalties. Therefore, they rejected the idea of choosing a Governor by a method of direct or indirect election. The best method they could think of then was having him appointed by President. However, despite this method looking comparatively fool-proof, it is not free from an apparent hitch. Appointment and removal of any constitutional authority by the President implies appointment and removal by Central Government. Although President is the head of the State in India, he must act in accordance with the aid and advice of the Council of Ministers (Article 74 [1]). If there was any doubt regarding to what extent was President bound by the advice the Council of Ministers, the passage of 42nd Amendment Act put an end to all such surmises by making it binding on the President to abide by the advice of the Council of Ministers. Hence, President cannot choose a person for the post of the Governor of the State by his free will. The Union Government does it in his name. Consequently, President cannot remove such person unless it is the wish of the Central Government. In 1982, Devi Lal met the President, Sanjeeva Reddy, to complain that despite majority being with him, the Governor did not consider his legitimate claim to form the
Government in Haryana. He demanded the dismissal of the Governor. The
President replied, "I cannot do it; only the Home Ministry can take such an
action." For this reason, even if the Fathers of the Constitution tried hard to
keep the office of the Governor free from the competitive politics, it has been
repeatedly politicized, at times so crassly that the Governor ended up looking
more like a reckless agent of central Government than a responsible
constitutional agency.

A cursory look into the debate in the Constituent Assembly regarding
the proposed office of the Governor would be relevant to understand the role
the fathers of the Constitution envisaged for a Governor, and the one he
subsequently came to play in the era of competitive politics, especially after
1967 when the political parties opposed to Congress captured power in
various States.

The Constituent Assembly discussed four methods of selecting Governor
before finally opting for his appointment by the president. These were:

- Election by adult franchise
- Election by the members of lower house or both houses of legislature
  either by system of proportional representation or otherwise
- Selection by president out of a panel of names submitted by the lower
  house of the State legislature
- Appointment by president
Rejection of Proposal of Election by Adult Franchise or State Legislature

The Constituent Assembly adopted a resolution in April 1947 to constitute two committees: A Provincial Constitution Committee, headed by Sarder Vallabh Bhai Patel and Union Constitution Committee, headed by Dr. B.R. Ambedkar. A joint session of these Committees was convened on June 7, 1947 in which following resolutions were placed:

- There should be a Governor as the head of each province
- Appointment of Governor should be by provincial Government and not by union Government
- Choice of Governor should be by direct election of special electorate on the basis of adult suffrage

On June 11, 1947 the provincial constitution committee took a decision that:

- Governor should be directly elected on the basis of adult suffrage
- His term should be coterminous with that of LA
- His term should be four years and his election should be simultaneous with election of members of lower house.

The Constituent Assembly had accepted the proposal of ideal provincial constitution after a review of report submitted to it, which is known as
'Memorandum on the principle of ideal provincial constitution.' It stated the following in respect of the appointment of the Governor in the provinces:5

- Election of the Governor should be directly by the people on the basis of adult suffrage barring in the contingency of death, resignation or removal, his term of office should be of four years.
- Governor could be removed on the basis of misdemeanor or proved misconduct by impeachment.
- The process of impeachment against a Governor could be initiated in the lower House of Legislative Assembly where there is bicameral legislature and it should be confirmed by the Union Parliamentary Committee. In each case resolution should be passed by at least 2/3 members of the total members of the House.
- For every province there should be deputy Governor who should be elected after every general election by State legislatures by proportional representation by single transferable vote. He shall fill up the unforeseen vacancy of the post of Governor.

Sardar Patel was of the opinion that the popular Governor, elected by the people of the Province, would have a considerable influence on the popular Ministry as well as on the Province as a whole. His dignity and status also demanded that he should have the support of all sections of the people in the country.6 There appeared a near unanimity amongst the members of
Constituent Assembly on having a popularly elected Governor. However, the events that followed the independence of the country compelled the members to do a serious rethinking on a number of issues facing the nation. The foremost was curbing the centrifugal tendencies that became evident in the wake of the partition of the country. The leaders felt that only a ‘strong Center’ would have an effective check on the fissiparous pendants, if any, within the Provinces. Nehru stated that experience of the two years following independence was bitter enough….to convince one to change one’s mind about certain decisions that one might have taken in the preceding years….. “Now one of the things we have been aiming at a great deal has been to avoid any separatist tendencies.” “The cataclysmic events surrounding partition had also compelled them to err on the side of caution, and they preferred to continue with the time-tested colonial instruments of governance.”

By August 15, 1947 the limitations imposed by the Cabinet Mission Plan were no more binding on the Constituent Assembly. The Assembly therefore rejected the idea of having a popularly elected Governor. The view of having a relatively stronger Center ultimately prevailed.

Another concern of Pandit Jawaharlal Nehru, which was shared by Dr. B.R. Ambedkar, was a huge and an unnecessary expenditure the procedure of election of Governor would incur. “To add another election on this major scale would mean not only spending a tremendous deal of energy and time of
the nation but also the money of nation and divert it from far more worthwhile projects." Dr. Ambedkar agreed, "…whether it was desirable to impose upon the electoral process which would cost a lot of time, a lot of trouble and I say a lot of money as well." 

Yet another issue related to the election of the Governor was incompatibility of such a system in parliamentary form of Government, which India was going to have. Both K.M. Munshi and H.V. Kamath opposed the election system on this ground. Munshi held, "after we have adopted the British model, the election of Governor by adult franchise in the Province remained an anomaly, a completely out of date and absurd thing." H.V. Kamath also felt that "if the object was to have parliamentary democracy in every State then it is patent…that the method of choice by election is obsoletely inappropriate and unacceptable."

The procedure of parliamentary system of Government in India entails election of members of Legislative Assembly and from amongst them appointment of Chief Minister and his Council of Ministers by the Governor. Wouldn't having an elected Governor lead to the conflict between his Office and that of the Chief Minister of the State? Commenting on this, H.V. Kamath said, "if the Governor were to be elected by the direct vote…..he is likely to be a party-man with strong views of his own…he will think he is far superior and more powerful than Chief Minister of the State…there will be two conflicting
authorities within the State: one is the Premier (Chief Minister) whom, under this constitution, we have invested with executive authority of the State and the other is Governor, who, though the constitution does not confer on him very substantial powers and functions, will arrogate himself, because he will say that I have been elected by the people of the whole of Province and as such I am persona gratia\textsuperscript{13}.....”

Election of Governor would also create a serious problem of leadership during the general elections with party members not knowing who should they rally around as a leader: the person who is contesting for the position of Governor or the one contesting for the post of Chief Minster\textsuperscript{14}?

An important feature of the parliamentary form of Government is that the head of the State is impartial and detached. If Governor were to be elected, he would be a party man and not a nonaligned authority. That was why the framers of the Constitution insisted on Governor being nominated. What they did not seem to realize, however, was that even a nominated Governor could behave like a petty party-man. There have been several instances when Governors have openly indulged in promoting the cause of the ruling party at the Center. A.P. Jain’s stint as the Governor of Kerala amply bears this out, though he was not the only one to have exhibited such blatant party loyalties. Mr. Jain took an active part in the election of Mrs. Indira Gandhi and when his action was questioned in media, he justified it by saying
that he had only accepted the office of Governor on a condition that he would relinquish it before the general elections to re-enter active politics\textsuperscript{15}.

Having accepted the idea of parliamentary democracy in the Provinces, there was no room whatsoever for any debate over the issue of Chief Minister of the State being elected by the people of the State, and wielding executive authority. An additional authority, such as the elected Governor, running parallel to that of Chief Minister within the State, would definitely not augur well for the smooth functioning of the provincial administration. Therefore, the Constituent Assembly held back from vesting in Governor’s office any such substantial powers that might eclipse the authority of the Chief Minister. It was clear then that the Assembly wanted the Governor to have extremely limited powers, and behave not only as friend and guide to the Council of Ministers but also be bound by its advice in the State. Dr. Ambedkar’s comment in this regard sums it up, “We feel powers of Governor were so limited, so nominal, his position so ornamental, that probably very few would come forward to stand for election\textsuperscript{16}.”

B.N. Rau, the advisor to the Provincial Constitution Assembly, had proposed that Governor should be elected by State legislature by a system of proportional representation by means of a single transferable vote. Mrs. Durga Rai felt that such a move would divide the House into warring groups
and would produce all the defects of French System\textsuperscript{17}. The Assembly thus rejected any kind of election of the Governor.

**Rejection of Panel System**

The Draft Committee had suggested the method of Panel system for the selection of the Governor. Under this system, the Governor was to be appointed by the President out of a panel of names submitted to him by Legislature of the State. The idea did not find favour with the Constituent Assembly and was rejected for a variety of reasons.

The members felt that panel system would lead to groupism in Legislature with each group wanting to see names of the persons from its group being forwarded to the President. Furthermore, such a system would take away the powers of the President to exercise his choice in selecting the Governor and put it in the hands of the State Legislature. Brajeshwar Mishra emphatically defended the need to keep the President free from the influence of the Legislature\textsuperscript{18}. H.V. Kamath pointed out another flaw in the proposed panel system. When the State Legislature would submit the panel of names to the President, the latter might choose any name irrespective of the order in which they are submitted. Suppose the panel consists of 15 names and the President chooses the last one, it might create grouse against that man. “In such case, the Legislature would certainly have grouse against the man
chosen by the President because he had been chosen in preference to the first man."

After thoroughly examining all the proposals and rejecting the ones suggesting election of Governor, the Constituent Assembly accepted the amendment for the appointment of Governor by the President 'by warrant under his hand and seal', taking it for a 'lesser-most evil'. Jawaharlal Nehru felt that such a system would be suitable for maintaining common links between the Center and the States. Alladi Krishnaswami Aiyar described it as cogent factor for establishing harmony, good working and sounder relations between Provincial Cabinet and the Governor. During the discussion it also came out that the man to be appointed as Governor would be an outsider to the State and convention would grow up of the Government of India consulting the Provincial Cabinet before sending a Governor there.

Despite the fact that majority members accepted the nomination method of selecting Governor, voices of dissent were nevertheless raised against it. Rohini Kumar Chaudhary felt that Governor who was selected by the Congress Party could not set in harmony with the Provincial Cabinet if it was of another party. Prof Shibban Lal Saxena held that Prime Minister of the Country might misuse his powers in advising the President of India for
nominating the Governor of the States\textsuperscript{26}. In the hindsight, it appears that their fears were prophetic.

**Issue of Qualification of Governor**

Except that he should be a man of integrity, outsider to the State to which he is appointed, not involved in active politics and not a member of the Legislature at the time of his appointment, Indian Constitution does not prescribe any special qualifications for the appointment of the Governor. And the ones prescribed are so subjective that they enable the Central Government to appoint as Governor any person of its choice. Hence, the Central Government has appointed such persons as Governors who can best serve its interests in the State, which led to eminent Parliamentarian, Nath Pai to remark that the “Centre degraded the office of Governor by making it a patronage and largesse\textsuperscript{27}.” In the initial days of the functioning of the Constitution, conventions were largely followed. Men of integrity and ability, as per the expectations of the fathers of the Constitution, adorned the office of Governor. There were a few skirmishes between the Council of Ministers and Governor in the States. During the time of Nehru, only two cases relating to the controversial role of Governors came to light. First one was when then Governor of Madras, Sri Prakasa, had C. Rajgopalachari sworn in as chief minister, which Nehru did not appreciate. But Central Government did not take any action against the Governor.
Second one was when the State Government headed by Namboodripad was dismissed in Kerala. One reason why there were a few controversies up to 1967 about the role of Governors in the State was domination of Congress party both at the Centre as well as in the States. After the year 1967, which marked the beginning of coalition politics in India, conflicts between Center and States over the role of Governor began to make their appearance more frequently. The opposition parties ruling the States charged the Central Government headed by the Congress with using the office of Governor as a tool to topple the non-congress State Governments. There was some justification in the charge. The Central Government had started appointing defeated and retired politicians as Governors, throwing to winds Nehru’s expectation that a Governor should not be preferably involved in politics. N.V. Gadgil, H.V. Pataskar and V.V. Giri have been listed in this category of ‘fallen horses’, having been raised to the position of Governor\textsuperscript{28}.

**Issue of Consulting the Chief Minister**

There was a considerable tension in Center-State relations over the issue of President consulting the Chief Minister of State before appointing a Governor there. An impression gained ground that the Center was not following this convention very strictly. For example, in Punjab, Gurnam Singh had disapproved of the two persons who were proposed Governors by the Central Government. Instead he suggested a few other names, but none of
these was appointed. Appointment of Nityanand Kanungo as Governor of Bihar evoked a bitter controversy. The Bihar Chief Minister, Mahamaya Prasad Sinha, not only publicly protested against the appointment of Kanungo, but also went on the record that his entire cabinet had rejected Kunango. Yet the Center went ahead with the appointment. The stand taken by the Central Government was that if at the consideration stage there were objections regarding a particular individual, they could be considered. But after the appointment had been announced and gazetted, there could be no going back on the decision to appoint Mr. Kanungo as Governor of Bihar.

Another interesting case of B. Gopala Reddy has been cited in Lok Sabha Debates. In Uttar Pradesh, the Central Government had announced the appointment of Dr. B. Gopala Reddy as Governor before the formation of new ministry headed by Charan Singh. When S.M. Banerjee raised a question in Lok Sabha whether Charan Singh would be consulted on this appointment, then Home Minister, Y.B. Chavan said there would be no consultation. Likewise, when Sri Prakasa was appointed Governor of Madras and Kumaraswami Raja of Orissa, the Chief Ministers of both States went on record that they were not consulted.

The violation of the convention of consulting the Chief Minister before appointing a Governor in a State resurfaced in 1984 when Rajiv Gandhi came to power. Jagmohan was appointed the Governor of Jammu & Kashmir, B.K. Nehru was made Governor of Gujarat and Bhishma Narayan Singh was
appointed Governor of Assam and Meghalaya. The Chief Ministers were
telephonically informed about these appointments, without being asked about
their opinion. In 1986 Mrs. Kumud Ben Joshi was appointed Governor of
Andhra Pradesh without consulting the Chief Minister.

There were fewer occasions when the Congress was replaced by an
Opposition at the Center. Whenever it happened, as in case of Janata Party in
1977, National Front Government led by V.P. Singh in 1990 or NDA in recent
times, there were expectations of cleaner and more transparent governance.
Unfortunately, new Governments hardly lived up to such expectations. In the
context of appointing Governors, rather foisting them on the States, V.P.
Singh Government appointed Jagmohan as the Governor of Jammu and
Kashmir in 1990 even when there was a strong opposition to his name from
the State Government, headed by Farooq Abdullah. A furious Farooq
Abdullah resigned along with his entire cabinet against the decision of the
Central Government, resulting in the imposition of President’s rule in the
State. This was probably the first time when a duly elected Chief Minister
resigned in protest against the appointment of Governor. V.P. Singh
Government made another history of sorts; it appointed 18 new Governors in
one stroke. Most of them were either closely connected with party or were
known for their fierce anti-congress stance. For example, Dr. Swarup Singh, a
relative of Charan Singh, became the Governor of Kerala. Swaraj Kaushal,
the husband of BJP leader, Sushma Swaraj, was made Governor of Mizoram
in the same period. And Prof. Devi Prasad Chattopadhay was installed as Governor of Rajasthan most probably because he had resigned from Congress\textsuperscript{34}. This clearly establishes the kind of logic that has so far gone into the appointment of a Governor.

Various studies on the Governor broadly list the following categories of people from which Governors were chosen\textsuperscript{35}:

1. **Fallen Horses but Party Loyalists**

   These are usually the persons who had lost in elections but were loyal to the leader of the party in power at the Centre. Governorship came to such persons as a gift. V.V. Giri, H.V. Pataskar, N.V. Gadgil, G.S. Pathak and Hafiz Mohd Ibrahim are a few examples in this category.

2. **Those Who Had ‘Nuisance Value’**

   This is a category of politicians who come in the way of the stability of their own party and the Government. They need to be removed for giving respite to other members of the party. In short, they are the ones with a very high ‘nuisance value’. Bhimsen Sacher (Punjab) Ram Krishna Rao (A.P.) Sampurna Nand (U.P.) M.M. Chaudhary (Assam), H.D. Joshi (Rajasthan), Vasant Dada Patil (Maharashtra) and Dr. Chenna Reddy (A.P.) are few such names.
3. **Those Having Proximity to Prime Minister**

Proximity to PM can pay rich dividends, one of which could be Governorship of the State. Amongst those who became Governor due to their closeness with PM include the names like A.P. Jain, H.K. Mehtab, B.S. Sacher and Satya Narayan Sinha.

4. **Those Who Could Throw a Serious Challenge**

This is a rare category in which influential political leaders who are not the members of the ruling party are sent away from their home as Governors mainly to make way for leader of the ruling party. For instance, an influential Socialist leader of Kerala, P.T. Pillai who had become Chief Minister with the support of the Congress was later sent as Governor of Punjab so that a local Congress leader may be promoted as Chief Minister.

5. **Those Who Enjoyed Top Administrative Positions**

A number of senior bureaucrats and Army officers occupied the office of Governor. These were: S. Chakravarti, B.N. Chakravarti, Dharama Vira, Y.N. Sukhantar, Vishnu Sahay, G.S. Bajpayee, S.P. Jagmohan, B.K. Nehru, S.L. Khurana, P.C. Alexander and so on. It is important to note that not all able officers were honored this way. Proximity with ‘powers that be’ played an important part in an administrative officer being found suitable for the Governorship. For instance, United Party Government of Deve Gowda
appointed a former IAS officer, Mr. Tajender Khanna, who had retired as a Secretary of Commerce, as Deputy Governor of Delhi. Along with Khanna two other Secretaries, A.C. Sen and G.C Pata, had also retired in the same period, but none of them appeared to have such a good fortune.\(^6\)

6. Retired Judges

Interestingly, despite Administrative Reforms Commission recommending against appointing judges as Governors, Central Government made several such appointments in various States. However, these appointments had been by and large temporary, often meant to fill in the gap between the exit of old incumbent and the entry of a new one. Justice P.V. Dixit, Justice G.P. Singh, Justice S.D. Ojha and Justice G.G. Sohani served as the acting Governors of Madhya Pradesh. Justice Sukhdev Singh was the Governor of Kerala and Justice Fatima Bibi acted as Governor of Tamil Nadu.

7. Former Speakers

In a few cases, the former speakers of Lok Sabha were also made Governors. These were Sardar Hukum Singh and Anant Shayanam Iyengar.

8. Learned People

Finally, many learned people have also occupied the office of Governor. In this regard, names of Sarojini Naidu, Sri Prakasa, Dr. Zakir Hussain, M.K.
Desai, Vijaya Lakshmi Pandit, Nawab Ali Yawar Jung, Sardar Gurumukh Nihal Singh, B.K. Nehru, D.C. Pavate, etc., can be mentioned.

**Issue of having Governor from outside the State**

The Constituent Assembly in general and Nehru in particular desired that it would be more appropriate to appoint such person as Governor who did not belong to the State where he was appointed. It was felt that an outsider would behave with a degree of detachment. Such a person would rise above local politics and serve as impartial constitutional authority. For this reason even the States Reorganization Commission was of the opinion that “the constitutional head of a State should not, generally speaking, be a resident of that State37.”

This convention has largely been followed in most of the appointments. However, there were a few digressions. Appointment of H.C. Mukherjee as Governor of West Bengal is a case in point. It happened that when the Central Government was appointing a Governor in West Bengal in 1951, the Chief Minister of Bengal, B.C. Roy, made it clear that he would not tolerate a non-Bengali Governor for the Bengal. More intelligent brains within the Central Government came up with the name of H.C. Mukherjee as a suitable candidate because although he was a Bengali, he was domiciled in Bihar, so in official terms, he was an outsider to the State where he was being appointed. After the death of H.C. Mukherjee, similar problem cropped up and
B.C. Roy again stuck to his guns. This time around, one more such candidate, who was Bengali by origin, but domiciled outside the State, was found – Padmaja Naidu, whose mother was a Bengali, but married to a resident of Andhra\textsuperscript{38}. In other cases where Governors came from the same State, a few notable examples are: Jaya Chamraj Wediyar Bahadur (Mysore, 1956) Karan Singh (Kashmir, 1965) and Ujjal Singh (Punjab, 1966).

**Issue of ‘Political Activism’ of Governors**

Looking at the kind of persons who had been appointed as Governors, it is evident that most of them came with a robust political background. Indulgence of Governors in active politics and their biased actions tending to benefit the ruling party at the Centre have evoked bitter controversies in the states. The case of A.P. Jain has already been mentioned in this context. The Executive Committee of Karnataka Janata Party Unit in a resolution adopted in 1977 alleged that the Governor of the State, Uma Shankar Dixit, was taking an active part in the politics of the state by helping Congress Party in various ways in the Lok Sabha elections held in March 1977. A delegation led by the Party General Secretary, Ram Krishna Hegde, met the Union Home Minister Charan Singh on April 12, 1977 and pleaded for immediate replacement of Karnataka Governor\textsuperscript{39}. Dikshit subsequently resigned and returned to active politics thereafter. The Governor of Sikkim, Homi Taleyarkhan attended a Congress meeting, addressed by Mrs. Indira Gandhi as the President of her
party in Sikkim. The leaders of the Opposition parties in Rajya Sabha urged the President to admonish the Governor for his open participation in a program of a political party. The Governor of West Bengal, A.P. Sharma openly canvassed in Delhi for his Rajya Sabha membership in March 1984. Subsequently, he got party ticket and resigned from gubernatorial post on August 15, 1984, to become the member of Rajya Sabha 40.

Towards 1972, Jogendra Singh, M.M. Chaudhary, Mohan Lal Sukhadia, Dr. M. Chenna Reddy and R.D. Bhandari, were appointed as Governors of various States. However, the moment elections to Sixth Lok Sabha in 1977 were declared, they all resigned and fought the elections as Congress Party nominees, tarnishing the image of the gubernatorial office. India's Foreign Minister S M Krishna, for instance, became Governor of Maharashtra in 2004 after the Congress party found him 'not competent enough to continue as chief minister of Karnataka'. After five years as Governor in Maharashtra, Krishna was back as one of the senior most cabinet Ministers in the Central Government. Shivraj Patil was sacked as Home Minister following the November 2008 terrorist attacks in Mumbai. But on January 22, 2010, Patil was appointed as Governor of Punjab.

For these reasons, particularly after 1967, opposition parties alleged that the institution of Governor was being pressed into service to serve the
partisan interests of Party in power as well as toppling down the non-Congress Governments in the State.

Issue of appointment of Governor became a bone of contention between the ruling and opposition parties in the Center as well in States. Allegations that these appointments, often controversial, were meant to unseat the non-Congress State Governments were galore between 1967 and 1980. Consequently, there were demands to bring about changes in the method of appointment of the Governor, although the remedies suggested failed to materialize into any acceptable solution.

According to A.B. Vajpayee, a panel of names should be placed before the Chief Minister to select one of them. The defect in this suggestion was that Center would prepare a list of Yes-men and forward it to the Chief Minister to choose from it.

Nath Pai suggested appointment of Governor should be subjected to approval of parliament. The shortcoming of this view is it would give power to the ruling party to appoint a person of its choice as Governor by virtue of its majority in Lok Sabha.

Study team of Administrative Reforms Commission, headed by Mr. Setalvad, suggested “Chief Minister should be consulted before appointment of Governor that State.” But practice showed principle of consultation has
not worked properly. And if consultation is made compulsory, the decision would go in Chief Minister’s hands, which is undesirable.

A Congress (O) leader, Ram Subhag Singh came up with an interesting suggestion. He wanted the President to act with aid and advice of a ‘Council of impartial advisors’ while appointing a Governor. The question is if President could choose a council of impartial advisors, why couldn’t he choose an impartial Governor?

A former Governor, K. Santhanam, and a former Chief Justice of Supreme Court, Justice K. Subba Rao, suggested that Governors should be appointed by the President in consultation with a high-power body. They however did not specify as to who would constitute this high-power body.

The Rajmannar Committee, appointed by DMK Government in September 1969 felt that a body of eminent jurists, lawyers and experienced administrators should be set up in this regard. The issue is if President is going to constitute such a body he can do so only with the advice of Central Government. Will the Central Government allow the inclusion of genuinely impartial members in the body empowered to select a Governor?

It may be mentioned that the Provincial Constitutional Committee under the Chairmanship of Sardar Patel had recommended the procedure of election as standard method to select the Governors. A few leaders reiterated this suggestion. A.D. Mani, M.K. Nambiar, E.M.S. Namboodripad and P.
Sunderyya wanted the system of election to be adopted for the Governor. They felt under such a system a Governor would act responsibly as he would have to face the public for all his actions. The suggestion sounds logical. When there is a system of election prescribed even for members of a Panchayat and for relatively unimportant positions in the bodies like Universities, Zilla Parishads and Legislative Councils of the States, there is no reason why constitutional head of the State should come by nomination in a democracy? Not all arguments in the Constituent Assembly in favor of the nomination as against election of the Governor look plausible. For example, the contention that Governor’s election would be an additional financial burden on the State exchequer does not sound very convincing. Parliamentary democracy is an expensive form of Government. There is a possibility of elections taking place even before the expiry of the term of Central or State Government due to a number of reasons. Besides, there are by-elections as well. If election is necessary to uphold a democratic principle, cost consideration should not come in the way, or else democracy cannot function. Cost of Governor’s election could have been cut down significantly had it been made simultaneous with the elections of State Legislature. Rohini Kumar Chaudhary rightly stated, “If an election (of Governor) takes place on the day of General election, there cannot be any question of additional expenses”.
Secondly, the argument that conflict of authority between a Governor and the Chief Minister would ensue if Governor were to be elected sounds fine, but is not so practical as to warrant the nomination of Governor as the only possible way out. There could have been means to avert the clash between the two. For instance, both President and the Prime Minister are elected via indirect and direct elections respectively. But the Constitution provides for the functions and powers of each in such way that any constitutional row between them is avoided. Similar arrangement was possible between Governor and Chief Minister even if Governor were elected. After all, the Governor performs more or less similar duties in a State that the President performs at the Center.

**Removal of Governor**

Under Article 156 of the Constitution, a Governor shall hold office during the pleasure of the President. The President can be removed by impeachment under the provisions of the Article 61. There is no such provision in case of the Governor. That he holds the office during the pleasure of President essentially means during the pleasure of Central Government, which can remove him anytime it wants. However, it is pertinent to note that the founding fathers of the Indian Constitution did not use the term ‘pleasure’ to mean ‘whims and fancies’ of the President. It was expected that if the President wanted to remove a Governor there had to be adequate and
reasonable grounds for such an action. “If the President removes the Governor simply because he does not approve of the actions of his Council of Ministers, who belong to a party different from the party in power at the Center then such a course would obviously be contrary to the spirit of the Constitution, if not mala fide and illegal." The cause for such drastic action by President must be consistent with law. As already mentioned, despite Nehru not liking the decision of Madras Governor, Sri Prakasa, to install C. Rajagopalachari as Chief Minister, the Governor was not removed. It was a healthy convention, which was, however, not followed by the subsequent Governments. After 1967, the Center Government chose to use the office of Governor for partisan interests and did not hesitate to remove the Governors if the latter did not serve its interests. A Governor thus does not have any security of tenure. Sarkaria Commission pointed out that out of 298 Governors appointed between 1967 and 1986 only 18 could complete their full five-year term.

There were high expectations with Janata Party Government when it came to power in 1977 that it would put an end to the practice of interfering with Governor’s office and using the Governor as a stooge of the Center. Actions that followed belied such expectations. The Morarji Desai Government appointed several new Governors that included Raghukul Tilak (Rajasthan), T.N. Singh (West Bengal), K.C. Abraham (Andhra Pradesh), G.D. Tapase (Uttar Pradesh) and so on. The case of G.D. Tapase is worth
mentioning. He was soon transferred to Haryana because he reportedly did not give a report against the Banarsi Das Ministry regarding poor law and order situation that Center was seeking at that time. Tapase’s refusal to toe the line of the Center resulted in his immediate replacement by C.P.N. Singh, which goes on to show that the new Government followed in the footsteps of Congress in this regard. Similarly, N.N. W anchoo, the Governor of Kerala was transferred to Madhya Pradesh, Harcharan Singh Brar from Orissa to Haryana, Jaisukhlal Hathi from Haryana to Punjab and Mrs. Sharda Mukherjee from Andhara Pradesh to Gujarat. The Lieutenant Governor of Delhi, Jagmohan was transferred to Goa, Daman and Diu.

When Congress returned to power, it hit back with a vengeance. The Governor of Tamil Nadu, B. Prabhudas Patwari, appointed by Janata Government, had put restriction on smoking and drinking in Raj Bhavan. The Congress Government dismissed him. The President and his staff could not get the facility of carousal in Raj Bhavan when they visited Madras, which reportedly caused the President’s displeasure in this case. Subsequently, Tarlok Nath Singh, the Governor of West Bengal and Raghukul Tilak, the Governor of Rajasthan, were removed. The Centre had a grudge against Tarlok Nath Singh that he had developed a good rapport with CPI (M) Government of West Bengal. Hence he was asked to resign even before he could complete his term.
Peeved at the removal of Raghukul Tilak, a former member of Rajasthan Legislative Assembly and an active member of Janata Dal, Surya Narain, challenged it in the Rajasthan High Court. His argument was that the five year term was mandatory for a Governor and the President had no power to withdraw his pleasure before that; any other interpretation would affect the basic structure of the Constitution. Rajasthan High Court negatived the contention saying that Article 156 (3) was subject to the exercise of absolute pleasure of the President under Article 156 (1). Further, the Constitution does not provide a specific procedure for removal of the Governor. As Constitution envisaged the role of Governor as a link between Centre and State, apart from his role as Constitutional head of the State, the pleasure of the President vis-à-vis the Governor was not limited by five year period. The Judge observed:

“The Presidential pleasure in the matter of removal of the Governor is not regulated or controlled by any provision in the manner as provided under Article 311 in relation to Civil Services. He has no security of tenure and no fixed term of office. He may be removed by an expression of Presidential displeasure. His removal at pleasure gives no cause of action.”

Governor has a dual role: he is the Constitutional head of the State as well as representative of Center in the State. As a representative of Center in the State, it is necessary that he enjoys the confidence of the Center. No
Government can have its representative acting on his own will without following the advice of the master. If a Governor indeed dares to do so, the Center has no choice but to remove him. The Constitution has therefore not prescribed any other method to remove the Governor than the one relating to the ‘pleasure’ of President. This is what emerges from the decision of Rajasthan High Court, which is based on the actual text of the Constitution, reflecting the intention of the makers of the Constitution.

No matter what its theoretical position is, in practice the office of Governor has been degraded by one Government after the other. V.P. Singh Government went to the extent of asking all the Governors to ‘lay down their office’ in 1990. The idea was to restore the lost credibility of Governor’s office. Therefore it was proposed that change in the Government should be followed by the change of the Governors irrespective of whether or not the Governors had committed any constitutional impropriety. Thanks to this line of thinking, office of Governor has been further disgraced as such thinking treats the Governor as an employee of the Central Government. Supreme Court had specifically mentioned that a Governor is a holder of a Constitutional office and is not an employee or appointee of Central Government:

"It is impossible to hold that the Governor is under the control of the Government of India. He is not amenable to the directions of the Government of India, nor is he accountable to them for the manner in which he carries out
his functions and duties. His is an independent constitutional office, which is
not subject to the control of the Government of India."}

It appears, however, that Central Government does not share this view in practice. Assuming that intention of V.P. Singh Government behind having 18 Governors, who were holdovers from Rajiv Gandhi Government, to resign following the change in the Government at Center, was noble, it still remains the case of remedy being worse than disease, which led a former Justice of Supreme Court, V.K Krishna Iyer to describe such a practice as “experiment in political pollution and trafficking in Governorships.” But the V.P. Singh Government was adamant on its stand. Then Home Minister, Mufti Mohammed Saeed defended the action of his Government saying, “The Governor is a representative of the Center and he should enjoy the confidence of the Center.” He stressed that State Governments would be consulted as the appointments (of Governors) were made but their concurrence was not necessary. The institution of the Governor was badly undermined following Chandrashekhar Government’s decision to dismiss the DMK Government of Tamil Nadu without even obtaining a report from the Governor of the state. “Every Government in the independent India played its part in treating the office of Governor as a political football.”

After trouncing the Vajpayee-led National Democratic Alliance coalition (NDA) in the General Elections of 2004, the Congress-led United Progressive
Alliance (UPA) Government, immediately after assuming power, took a decision to pack off the Governors of the four States – Kedar Nath Sahni (Goa), Kailash Pathi Mishra (Gujarat), Babu Parmanand (Haryana) and Vishnu Kant Shastri (Uttar Pradesh). The Central Government did not immediately specify any reasons for dismissal of these Governors, although what appeared in the media pointed to the possibility of one or all of the following factors:

a) They were political appointees who had been sent to their respective states with a specific purpose;

b) They made no effort to hide their RSS-BJP background when in office; and / or;

c) They refused to get the hint and resign on their own after the change of Government at the Centre.

Of the four sacked Governors, Bhai Parmanand (Haryana) was reported to have made an open appeal to an audience in Rewari to vote for Atal Bihari Vajpayee in the run-up to the election. Kidar Nath Sahni (Goa) was in a big flap over charges that he had tried to frame a Delhi event manager to cover up a ‘video cassette’.

Interestingly, the other Governors who were appointed during the NDA regime were left untouched. They included T. N. Chaturvedi (Karnataka), Madan Lal Khurana (Rajasthan) and M Rama Jois (Jharkhand). It may be
mentioned that the Pondicherry Lieutenant Governor N N Jha left before the controversy broke out. Jha, a former IFS officer, was in the eye of a storm ever since he had invited BJP candidate Lalitha Kumaramangalam to a Raj Bhavan party during the Lok Sabha election campaign.

The dismissal of the Governors by UPA led to uproarious scenes in the Lok Sabha with BJP demanding to know how could the Government sack Governors on the basis of their ideology. Advani said it was an “outrageous assault on multi-party democracy” as removal of four Governors” on grounds of “ideology” would weaken the federal structure of the Constitution. Former Prime Minister Atal Bihari Vajpayee criticised the Central Government for treating Governors like “Bihari mazdoors”. He said that the sacking of the four Governors before the completion of their five-year term was humiliation of the chair and should be condemned by all those who value democracy.

The Home Minister Shivraj Patil defended the action of the Government by replying that it was well within its constitutional and legal rights to remove four Governors, and stated that non-Congress regimes at the Centre had not only removed Governors in the past but also dissolved nine elected assemblies in one go. When Advani remarked that BJP Chief Ministers were only informed and never consulted about the Centre’s decision, Patil replied, “We did consult them in our own fashion... consultation is not concurrence... some had readily agreed and some had reservations.”
Advani further pressed that actions of Congress Government went contrary to the intentions of the framers of the Constitution and recommendations of various commissions. Patil shot back, “Debate in the Constituent Assembly, the recommendations of the Sarkaria Commission, reports of the Inter-State Council and that of the Constitution Review Committee were “advisory in nature” and “not binding” on any Government62.

If the Congress was behaving like a party whose cup was overflowing with power, BJP’s recourse to political moralism on the issue sounded much like a case of the ‘Devil quoting the scriptures’. It may be recalled that in 1998, when the BJP came to power for the first time, then Union Home Secretary B.P. Singh was reported to have asked three Governors (Gujarat, Goa and Mizoram) and three lieutenant Governors (Delhi, Andaman and Nicobar, and Pondicherry) to put in their papers63. In fact, the then Gujarat Governor Krishna Pal Singh said that the Union home secretary had informed him that it was the Centre's 'wish' that he resigned64. At the BJP's National Council meeting in Gandhinagar on May 4, 1998, L.K. Advani pointedly defended political appointments to Governor's office, arguing that the party was never in agreement with the Sarkaria Commission's recommendations on the subject65.

As a sequel to this controversial issue of Governors’ dismissal, former BJP Member of Parliament, B.P. Singhal filed a PIL in the Supreme Court,
challenging the July 2, 2004, removal of four Governors by the UPA Government. The verdict came on May 7, 2010. The Court pointed out that Governors cannot be sacked with every change of guard at the Centre. The Court observed:

“A Governor cannot be removed on the ground that he is out of sync with the policies and ideologies of the Union Government or the party in power at the Centre… (or because) the Union Government has lost confidence in him… A change in Government at the Centre is not a ground for removal of Governors... to make way for others favored by the new Government.”

The Court was seized of the issue of coalition Governments being norm of the day in recent years. In such an atmosphere, it was likely that several States might have the Government formed by the regional parties whose ideology might not match with that of Central Government. The Apex Court made three important points in this regard:

1) The President (who acts on the Government’s recommendations) can remove Governors only on a case-by-case basis.

2) President can do so only for valid reasons, such as those relating to his physical/mental inability, integrity and behavior.

3) And while the President need not disclose or inform the cause for his removal to the Governor, it is imperative that a cause must exist.
To justify its ruling, the court cited two principal reasons:

1) **Governors are not the Centre’s agents or employees but hold their office at the “pleasure” of the President. They are not expected or required to carry out the Government’s policies or popular mandates, and have a constitutional rather than political role.**

2) **Reputable elder statesmen, able administrators and eminent personalities are expected to be appointed Governors.**

The Court ruled:

“While some of them may come from a political background, once they are appointed Governors, they owe their allegiance and loyalty to the Constitution and not to any political party. The arrival of the coalition era in Indian politics means the ruling party at the Centre will be faced with many state Governments formed by parties with rival ideologies and policies. Besides, the compulsions of coalition politics may force parties to frequently change their policies and agendas. In such a scenario of myriad policies, ideologies, agendas in the shifting sands of political coalitions, there is no question of the Union Government having Governors who are in sync with its mandate and policies.”
The Court clearly said that in the changing political scenario, loss of confidence could not be taken as sufficient ground for removing a Governor. It also stressed that while President's power to remove the Governor cannot be challenged, it was not outside the purview of judicial review. "We do not accept the contention that an order under Article 156 is not justiciable." But these observations carried more of symbolic value than any legal certainty; while they served a purpose in rapping the Central Government for its action in dismissing four Governors, they did not anywhere mean to stay the decision of the Government.

It would be futile to expect a Constitutional authority to function independently and impartially especially when its tenure, instead of being secured by the Constitutional provisions, is linked to an individual's pleasure. An employee in the lowest rung of the administration has constitutional remedies available to him in case of his dismissal from his office. Quite surprisingly, Constitutional head of the State in India is deprived of that kind of privilege, which decidedly makes him meekly toe the line of the Center more often than not. In order to ensure that the office of Governor remains effective and impartial, the method of his removal needs to be specifically reviewed. At the moment, it is just the 'pleasure principle' of the President that determines whether or not a Governor remains in the Office. Impeachment could have been a better option if at all removing a Governor becomes imperative, though it could have its own hazards of landing Governor in the arena of legislature
and making him a plaything in the hands of members of parliament. Justice Subba Rao suggested that a Governor should not be removable from the office on any other ground than a proven misbehavior or incapacity after inquiry by Supreme Court\textsuperscript{74}.

**Term of Office**

A Governor is appointed for a period of five years. In between, however, depending upon the pleasure of the President, he may be transferred or even removed. There have been quite a few occasions when Governors were removed or transferred. A change in Government at the Center usually led to such situations. Otherwise, Governor stays in office for five years and can continue to stay until his successor enters upon the office\textsuperscript{75}. Ms. Padmaja Naidu continued as the Governor of Bengal after the expiry of her term for such a long time that her continuance was challenged in the Calcutta High Court. The Court upheld her continuance as constitutional but remarked that the provision of the Constitution was not meant for very long periods. Based on illness or other serious reasons, Administrative Reforms Commission recommended only three months’ extension to Governor who has served his term\textsuperscript{76}. Yet if the Central Government wants, it can delay the appointment of a new Governor in a State where the term of the existing Governor is over, and thus pave a way for the latter to continue in the office. Ms. Naidu’s case is not isolated. Ultimately, appointment and removal
of Governor is a matter of the ‘pleasure of the President’, who is bound by the advice of Prime Minister and his Council.

Notes and References

1 P.L. Mathur, “Role of Governor in Non-Congress States”, P-28
2 For detailed discussions regarding the nature of the proposed Governor’s office, see the “Constituent Assembly Debates”, Vol. VIII, P-400-600
3 The Statesman, May 27, 1982
4 V.S. Singh, “Governance and the Governor”, P-39
5 Cited in Mona Shukla, “Governor in Democracy”, P-42
6 C.A.D., Vol. IV, P-586
7 Ibid, Vol. VIII, P-554
9 C.A.D., Vol. VIII, P-555
10 Ibid, P-467
11 Ibid, P-462
12 Ibid, P-428
13 Ibid, P-429
15 The Statesman, January 28, 1966
16 C.A.D., Vol. VIII, P-468
17 Ibid, P-450
18 Ibid, P-426
19 Ibid, P-429
20 Ibid, P-430
21 Ibid, P-455
22 Ibid, P-433
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27 Lok Sabha Debates, Vol II, 1967, Col. 2793
29 The Tribune, August 18, 1967
64 The Hindu, April 15, 1998
66 B.P. Singhal Vs. Union of India & Anr, Writ Petition (Civil) No.296 of 2004
67 The Daily Telegraph, May 8, 2010
68 Ibid
69 Ibid
70 Ibid
71 Ibid
72 B.P. Singhal Vs. Union of India, op. cit., Para-40
73 Ibid, Para-42
74 The Times of India, March 3, 1969
75 Article 156(3) of Indian Constitution
76 Report of A.R.C., P-285