



The governor and chief minister-A constitutional study in India

M Pushyamitra

PG College of Law, Osmania University, Hyderabad, Telangana, India

Abstract

The Constitution of India establishes a Parliamentary form of Government Governor is an important Constitutional functionary Governor would be a link between the Union and States paving the way to a healthy and harmonious relationship between the two. Our Constitution provides that there shall be a Council of Ministers with the Chief Minister at the head to aid and advice the Governor in the exercise of his functions. The role of Governors has come under severe criticism on the ground that some Governors have failed to display the qualities of impartiality expected of them. These powers are implied powers, which are exercised according to the situations which may vary. In the appointment of the Chief Minister, the Governor can use his discretion. The extent of use of discretion in the appointment of the Chief Minister depends upon the situation that arises. When a single party or group has the majority, the leader of the majority party is invited to form the government. *S. R. Bommai v. Union of India* is a landmark decision of the Supreme Court of India. The Union can intervene and take over the administration of a State itself if the Government of the State is not being carried on in accordance with the provisions of the Constitution.

Keywords: governor, constitution of India, government, chief minister

Introduction

Though it had been in existence during the British regime which lasted for more than two hundred years, yet the origin of the office of the Governor may be traced back to Vedic period. Governor is an important Constitutional functionary under the Indian Governmental set up. The Constitution of India establishes a Parliamentary form of Government which is primarily based on west-minister model. The founding fathers of the Constitution envisaged a Federal Form of Government, keeping in view the vastness of the country and diversity in language and culture. The framers of the Constitution intended that in course of time healthy conventions will be evolved, and the Governor would be a link between the Union and States paving the way to a healthy and harmonious relationship between the two. The Governor by his rich experience in public life would act as guide or adviser to the State Government. He would be always above party politics^[1].

Discretionary powers of the Governor means the powers of the Governor which he exercises as per his own individual judgment or without the aid and advice of the Council of Ministers. In the discharge of his responsibilities as the Head of the State, the Governor exercises his powers similar to that of the President as the Head of the Union. Our Constitution provides that there shall be a Council of Ministers with the Chief Minister at the head to aid and advice the Governor in the exercise of his functions^[2].

It is important to mention here that detailed deliberations took place with regard to the status and- position of the Governor in the Constituent Assembly touching its various aspects. Remarkably, Alladi Krishna Swami Aiyar, KM. Munshi, T.T. Krishnamachari, B.R. Ambedkar and Pt. Jawaharlal Nehru amongst others, realizing the importance of the office of the Governor were of the opinion that the Governor should be a person of "undoubted ability and position in public life who, at the same time, has not been mixed up in provincial party struggle and factions."^[3] Dr. B. R. Ambedkar, the Chairman of Constituent Assembly expressed his views that, *Because the Provincial Governments are required to work in subordination to the Central Government and therefore, the Governor will reserve certain things in order to give the President the opportunity to see that the rules under which the Provincial Governments are supposed to act according to the Constitution or in subordination to the Central Government are observed.*"^[4]

In the case of *S. Dharmalingam vs Governor of Tamil Nadu*^[5] held that certain powers are available to the Governor under Article 163 which he would exercise in his sole discretion. The immunity of the Governor is absolute, when he acts in his own discretion. In *Pratap Singh Raojirao Rane vs Governor of Goa*,^[6] court held that the Governor is not answerable to the court even in respect of charge of malafide^[7].

The role of Governors has come under severe criticism on the ground that some Governors have failed to display the qualities of impartiality expected of them^[8]. It has always been seen that issues of qualifications and appointment of the Governors have remained controversial. There is a practice that the defeated politicians are appointed as Governors who do not exercise their powers impartially.

Position of governors

The Constitution of India though federal in form is most of the traditional federal pattern. The Parliament can without the concurrence of the States concerned re-align the boundaries of the States, merge States or divide them and may even abolish the existence of a State. The Constitution puts on the Union the responsibility for ensuring that the States are administered in accordance with the Constitution. The Union can intervene and take over the administration of a State itself if the Government of the State is not being carried on in accordance with the provisions of the Constitution. Apart from these powers, the Union is competent under the Constitution to give executive directions to the State from time to time in various matters^[9]. The Governor under our Constitution holds a dual role or we can say he has to play a two-fold role or set in two capacities first as a Constitutional Head or a Chief Executive of the State who is a part of the Legislature of the State also. In that capacity he has numerous important functions; and secondly, as a representative of the Union in the State. In the latter capacity he works as a link between the Centre and the State. India continues to be a Federation. One would normally expect that the Governors of the States as the Chief Executive of the federating Units should have formal equality with the Chief Executive of the Union, viz. the President^[10].

Specific discretionary powers

Article 239 provides that a Union Territory shall be administered by the President through an Administrator with such designation as he may specify or a Governor of a State, adjoining Union Territory, may be appointed as the Administrator of that Union Territory. Where the Governor of a State is appointed as the Administrator of an adjoining Union Territory, he shall exercise his functions as the Administrator without the aid and advice of his Council of Ministers. Or in other words Governor as an Administrator can act independently without his Council of Ministers.

In the case of *Ganamani vs Governor of Andhra*^[11] the court observed that “All the powers exercisable by the Governor can be exercised on the advice of the Council of Ministers except insofar as the Constitution expressly or perhaps by necessary implication says that he can exercise those powers in his individual discretion”

So, in discharging the obligations mentioned above the Governor is not bound to seek the advice of the Council of Ministers and his role is not controversial, when he acts in his discretion to fulfill his obligations. However, the Sarkaria Commission recommended that “before taking a final decision in the exercise of his discretion, it is advisable that the Governor should, if feasible consult his Ministers even in such matters, which relate essentially to the administration of a State”. Such a practice will be conducive to the maintenance of healthy relations between the Governor and his Council of Ministers^[12].

Circumstantial Discretionary Power

These powers are implied powers, which are exercised according to the situations which may vary. When Governor acts in such circumstances, his role becomes controversial many a times. This raises a question that whether the Governor is merely a figure head, who is to exercise his powers in accordance with the advice of his ministers, responsible to the Lower House or he has some real power. If any question arises as to whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion^[13].

Our Constitution is silent about the person who should be appointed as the Chief Minister. It does also not prescribe any qualification for the person to be appointed by the Governor as the Chief Minister^[14]. A person who is not a Member of any House may be appointed as the Chief Minister for six months. After the completion of six months if he wants to be continued as Chief Minister, then he has to be the Member of the House^[15].

In *S.R. Chaudhuri vs State of Punjab*^[16] the Court held that the absence of the expression ‘from amongst the Members of the Legislature’ in Article 164(1), is indicative of the position that whereas under that provision a non-legislator can be appointed as a Chief Minister, but that appointment would be governed by Article 164(4), which places a restriction on such a non-member to continue as a Minister or Chief Minister as the case may be, unless he can get himself elected to the Legislature within the period of six consecutive months.” Sarkaria Commission recommended that a Chief Minister, unless he is the leader of a party which has absolute majority in the Assembly, should seek a vote of confidence in the Assembly within 30 days of taking over^[17].

In the appointment of the Chief Minister, the Governor can use his discretion. The extent of use of discretion in the appointment of the Chief Minister depends upon the situation that arises. When a single party or group has the majority, the leader of the majority party is invited to form the government. At this time, Governor has not much say in the appointment of the Chief Minister. But he can use his discretion in this situation also and refuse to appoint the leader of the majority party as the Chief Minister, if the majority party in the Legislature asks to appoint such a person as the Chief Minister, who is not qualified to be a member of the Legislature or who is disqualified to be such^[18].

Constitution does not provide any specific guidelines to the Governor for the appointment of Chief Minister in such circumstances. That’s why the Governors are not using any uniform practice in such circumstances. Sometimes Governors have invited the leader of single largest party to form the government and sometimes he invited the leader of the United Front, whether it was formed prior to election or after the election.

In case of *Mahabir Prasad vs Prafulla Chandra*,^[19] Justice Mitra observed that “the Governor in making the appointment of the Chief Minister under Article 164 (1) of the Constitution gets in his sole discretion. The exercise of this discretion by the Governor cannot be called in question in High Court. There is no warrant in the Constitution itself to read in Article 164 (1), a condition or restriction that the Governor must act on the advice of Council of Ministers as provided in Article 163 (1), in the matter of appointment of Chief Minister. It is for him to make such enquiries as he thinks proper, to ascertain who among the Members of the Legislature ought to be appointed as the Chief Minister and would be in a position to enjoy the confidence of the majority in the Legislative Assembly of the State.”

- a. Dissolution of State Assembly
- b. Discretion of Governor to Dismiss the Ministry
- c. Summon and Prorogue the State Assembly
- d. Recommendation of President’s Rule
- e. Pardoning Power
- f. Appointment of the Vice-Chancellor

Chief Minister

The Chief Minister is appointed by the Governor. The other Ministers are appointed by the Governor on the advice of the Chief Minister. It is the sole prerogative of the Chief Minister to form the Ministry by choosing such Ministers as he may deem fit. Judiciary cannot intervene in the matter relating to appointment or allocation of ministries^[20]. The Ministers hold office during the pleasure of the Governor. The Council of Ministers is collectively responsible to the Legislative Assembly of the State. Before a Minister enters upon his office, the Governor administers to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule^[21].

Where there is a clear majority of one party, the task of Governor to choose the Chief Minister is easy. But where there is no party which commands a majority, the Governor should select a leader who in his judgment is most likely to command a majority in the Assembly. In this regard experience of France offers a close parallel to our experience in India. The procedure followed there and the conventions developed there would be acceptable for our purposes. The suspicion that the Governor may be influenced in making the choice by dictation from the Central Government would be completely eliminated. The Governor may offer the post of Chief-Minister to 3, 4 or even half a dozen persons in succession, before he is to discover who has a majority support in the State Legislature. Because, this will, immediately destroy all accusation that the Centre is interfering or is dictating to the Governor. This experiment was in fact successfully made in the case of Punjab after the fourth General Election, when the third invitee was found by the Governor to be in a position to form a Government. It should also be accepted that the first invitee should always be the leader of the largest single party in the Legislature. The Governor's task should be to see that durable government is formed. In the absence of clear majority of any party in Legislative Assembly, the Governor should select a Chief Minister from among the alliance formed before the election, preferably the leader of the largest single party seeking a claim with the support of others.

It is significant to note here that if the Governor is favourably inclined towards the Chief Minister, he may not press the Chief Minister to face the Assembly even if there is a reasonable cause to believe that the majority of the Chief Minister is doubtful. In *Mahabir Prasad Sharma v. Prafulla Chandra Ghose*^[22] the Calcutta High Court has ruled that if the Council of Ministers refuses to vacate the office of ministers, after the defeat of the confidence motion in the House, then the Governor may withdraw his pleasure. The Court also held that the right of the Governor to withdraw his pleasure during which the minister is to hold office is absolute, unrestricted and unfettered and the exercise of discretion in withdrawing the pleasure cannot be called in question in a court of law.

In *S.R. Bommai v. Union of India*^[23], it was observed that in the circumstances of any doubt that whether a ministry enjoys the majority, the best way of testing is the floor of the House and the majority of the ministry is not the matter of personal opinion of the Governor. The assessment of the strength of the Ministry is not a matter of private opinion of any individual, be he the Governor or the President. Such provision is necessary and it is therefore, suggested that a provision be added in the Constitution that the majority must be tested in the House and nowhere else.

S. R. Bommai v. Union of India is a landmark decision of the Supreme Court of India, where the Court discussed at length provisions of Article 356 of the Constitution of India and related issues. This case had huge impact on Centre-State Relations.

In *S.R. Bommai v. Union of India*, the Supreme Court has laid down guidelines in this respect during proclamation of emergency under Article 356 of the Constitution and has held that the Assembly should not be dissolved until the Proclamation made under Article 356 by the President, has been approved by both the Houses of Parliament. If the Ministry enjoys a majority and yet demands dissolution then there is no alternative but to order dissolution. Similarly, the Governor can order dissolution, under Article 356, if the Ministry resigns without passing the budget. But if the suggestion of dissolution comes from a Ministry that has lost its majority and is afraid of the opposition taking over, the Governor can refuse. In this case, it is his duty to summon the House and try to find an alternative in the Assembly. In his discretion he can refuse to accept the advice of

dissolution. However, he should avoid entering into controversy or becoming a party to the politics of defectors himself. This august office should not be misused by the Centre to engineer defections^[24].

However, the office of the Governor in the recent past has become an area of controversy. With different political parties coming into power in the States having different ideologies, frictions have developed between the Union and the States with regard to sharing of the power under the Constitution. The recent happenings in Bihar^[25] Goa Jharkhand^[26] and have led the respective Governments to look down the office of the Governor as an agent of the Union waiting for an opportunity to destabilize them from power.

It is worthwhile to make a brief reference to here the cases in which the institution of Governor has been openly politicalised, and the Governors are forced to be critical by the parties in power at the Centre. The not so old instances of Bihar and Jharkhand during governorship of Mr. Buta Singh and Mr. Syed Sibtey Razi, respectively, have projected on the national scene the controversial aspect of the gubernatorial affairs. In this context, the Honorable Supreme Court of India indicted Bihar Governor Buta Singh of misleading the Centre in recommending the dissolution of Bihar Assembly in May 2005, and said that the Union Council of Ministers should have verified his report before accepting it as a gospel truth^[27].

The Constitution of India has given to the Governor a curious dual role. He occupies in his State a position parallel to that of the President vis-a-vis the Union of India. He is not supposed to run a parallel government in the State. His role is that of a safeguard counselor, mediator and arbitrator rather than an active politician. He has to abide by the aid and advice of the Council of Ministers, but that does not mean immediate acceptance. He can reserve bills for reconsideration and prevent hasty decisions. Great caution and restraint must be exercised while reporting to the President under Article 356 otherwise his image, as the guardian of the State would get tarnished. It is suggested that he must keep himself away from active politics. An active politician who has identified himself with a political party cannot inspire the total trust of the people^[28].

Many a times Governors misuse their discretionary power in appointing a Chief Minister. In some instances, he did not give a chance to form the government to the claimant. Even guidelines are provided time to time by different endeavors but the Governors continue to misuse their discretion and the check on this power could not be imposed. Sometimes the Governors do not even follow the report of the Governors' Committee according to which the majority of the party must be tested on the floor of the House.

▪ *Recommendations of Sarkaria Commission for the Appointment of the Chief Minister*

In the appointment of the Chief Minister the Commission provides the following guidelines^[29]:

1. The leader of the single largest party having absolute majority in the Assembly should be asked to form the Government.
2. If no party has the majority, then the leader of an alliance of parties that was formed prior to the elections should be called to form the Government.
3. In case there is no coalition prior to the elections, then the leader of single largest party who claims to form the Government with others should be called to form the Government.
4. In case no Government is formed, then the leader of the post electoral coalition parties should be called to form the Government.

▪ *Recommendations of M.M. Punchhi Commission regarding Appointment of the Chief Minister*

Punchhi Commission laid down significant guidelines for the appointment of Chief Ministers^[30]. And uphold the view that a pre-poll alliance should be treated as one political party; it lays down the order of precedence that ought to be followed by the Governor in case of a hung House:

1. Call the group with the largest pre-poll alliance commanding the largest number;
2. The single largest party with support of others;
3. The post-electoral coalition with all parties joining the government; and last
4. The post-electoral alliance with some parties joining the government and remaining including Independents supporting from outside.

Conclusion

The observations of Pandit Jawaharlal Nehru, in this context, are worth quoting here: "We have made a Constitution and we should abide by the Constitution, nevertheless, let it not be said that that Constitution, every part of it, every chapter and corner of it, is something that is so sacrosanct that it cannot be changed even if the needs of the Country or the Nation so required. Undoubtedly, it can be changed whenever necessary, not lightly but after full thought, if it is thought that the part of the Constitution comes in the way of the nation's progress^[31]."

Article 159 of the Constitution imposes a duty upon the Governor to preserve, protect and defend the Constitution and the law of the Country and he is also responsible for the well-being of the people of the State. Generally, he exercises his powers on the recommendations of the Council of Ministers. But Governor may not just a state-head.

It is necessary to empower the Governor with discretion relating to the assent to State Bills to avoid hasty legislations and to preserve or protect the Constitution. In the same, the Governor should act as a guide on public interest matters and in the interest of Nation. The Governor's discretionary powers make him a very powerful functionary in the Parliamentary form of government in the Constitution of India and being the head of the State.

The Constitution of India though federal in form but possesses strong centralising tendency^[32]. The Parliament can without the concurrence of the States concerned re-align the boundaries of the States, merge States or divide them and may even abolish the existence of a State. The Constitution puts on the Union the responsibility for ensuring that the States are administered in accordance with the Constitution. The Union can intervene and take over the administration of a State itself if the Government of the State is not being carried on in accordance with the provisions of the Constitution. Apart from these powers, the Union is competent under the Constitution to give executive directions to the State from time to time in various matters^[33].

References

1. Somayajulu DSN. Governor Appointment and His Powers, 135 (1988), See also, U.N., Gupta, Indian Federalism and Unity of Nation 135, 1988.
2. Article 163 (1), Constitution of India
3. C.A.D. 8, 431.
4. Constituent Assembly Debates at 502, 3.
5. AIR 1989 Mad. 48
6. AIR 1999 Bom. 53
7. AIR 1954 A.P. 9.
8. Anil Kumar, Jha V. Union of India, (2005) 3 SCC 998; and See, Rameshwar Prasad v. Union of India. AIR 2006 SC 980.
9. Setalvad, M.C., Role of State Governors in India, edited by Grover, Verinder, Essay on Indian Government and Politics, 180-181 (1988).
10. Dash Shreeram Chandra. Role of State Governors in India, in Essays on Indian Government and Politics edited by Grover, Verinder, 209 (1988).
11. A. I. R.1954 A. P. 9
12. Sarkaria Commission Report on Centre-State relations, para 4.14.05.
13. Article 163 (2), Constitution of India.
14. Harsharan Verma vs Tribhuvan Narain Singh, AIR 1971(1) SCC 616.
15. Article 164(4), Constitution of India.
16. AIR 2001 SC 2707.
17. Sarkaria Commission Report on Centre-State relations, para 4.16.10 (c)
18. B R Kapur. vs State of Tamil Nadu, AIR 2001 SC 3435.
19. AIR 1969 Cal 198.
20. Ghouse Muhiddeen F. v. Government of India, AIR 2002 Mad. 470.
21. Article 164 of the Constitution of India. See also Dattaji Chirandas v. State of Gujarat, AIR 1999Guj48.
22. AIR 1969 Cal 189. In this case the Governor dismissed the Ajoy only on doubts having been raised about the support of majority in the House.
23. AIR 1994 SC 1918 : (1994)3 SCC1)
24. AIR 1994 SC 1918.
25. Rameshwar Prasad v. Union of India, AIR 2006 SC 980.
26. Anil Kumar Jha v. Union of India (2005) 3 SCC 998
27. Rameshwar Prasad v. Union of India, AIR 2006 SC 980.
28. Goyal Rajni. The Governor-Constitutional Position and Political Reality, 1992, 505-523.
29. Jain MP. Indian Constitutional Law, Fifth Edition, Wadhwa and Company, 2003, 409
30. Punchhi Commission was set up in April 2007 under the chairmanship of the Justice Madan Mohan Punchhi, to take a fresh look at the relative roles and responsibilities of the various levels of government and their inter-relations. The members of the Commission are Dharendra Singh, V. K. Duggal, Dr. N. R. Madhava Menon and Vijay Shankar. Commission submitted its report on, 2010.
31. Swarup Jagdish. Constitution of India, 2006, 5.
32. Jennings Ivor. Some Characteristics of Indian Constitution, 1 (1953); See also C.H., Alexandrowicz, Is India a Federation?, 1954, 398.
33. Setalvad MC. Role of State Governors in India, edited by Grover, Verinder, Essay on Indian Government and Politics, 1988, 180-181.