

Governors and the Federal Polity

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Recent political developments in Sikkim and Goa on the one hand, and the judgement of the Supreme Court on the use of Article 356 on the other, have once again resulted in attention being increasingly focused on the role of the Governor in the Indian federal system. Over the last three decades, tensions in Centre-State relations have, more often than not, been in some way or the other linked to the office of the Governor.

In Sikkim, the firm manner in which Governor Tahiliani insisted, in the first instance, that the trial of strength of the Bhandari Ministry must take place on the floor of the Assembly and not on the basis of a 'head count' in Raj Bhavan, has only demonstrated that given the will, a Governor can ensure respect to constitutional norms and values, irrespective of the nature of political pressures that the office may be subjected to. Further, the manner in which the Governor handled the political crisis caused by the resignations of the Opposition MLAs from the State Assembly, bears testimony to the judicious manner in which such crises can be handled.

On the other hand, the developments in Goa, where the Governor dismissed a Chief Minister and administered the oath of office to another individual in his place—without either a trial of strength on the floor of the Assembly or a change of leadership in the majority party in the legislature—are reflective of the manner in which constitutional provisions and principles can be fancifully interpreted to suit and serve partisan political—even personal—ends. The then Governor of Goa, Bhanu Prakash Singh, asserted—when dismissing D'Souza as the Chief Minister and installing Ravi Naik in his place—that under the provisions of Article 164[1] of the Constitution, the Council of Ministers continued at the pleasure of the Governor, and his action was, therefore, 'constitutionally correct'. Reading 'pleasure of the Governor' as the 'personal pleasure of the Governor' is truly an amazing interpretation of the constitutional provisions and makes a mockery of the intentions of the framers of the Constitution.

However, it must be noted that what Bhanu Prakash Singh did in Goa, was neither unique nor

something new. In the past too Governors have abused the authority vested in them by dismissing Chief Ministers who enjoyed majority support and appointing in their place individuals who were incapable of demonstrating their majority in the Assembly or suggested the declaration of President's Rule when the situation did not warrant it.

THE action of Governor Ram Lal in Andhra Pradesh (1984), of dismissing N.T. Rama Rao as the Chief Minister and installing Bhaskara Rao in his place is a case in point. Further, in the past, Governors have appointed individuals as Chief Ministers who had no majority support in the Assembly and have denied an opportunity (to form a government) to those who enjoyed a clear majority. The invitation extended by Governor Tapase in Haryana in 1982 to Bhajan Lal, to form the government after the Assembly elections, even when it was clear that the alliance led by Devi Lal had won a majority of the seats can be cited as an illustration in this regard. In 1989 in Karnataka, the then Governor P. Venkatasubbiah dismissed the Bommai Ministry and advised the imposition of President's Rule on the ground that he was convinced that 'the Bommai Government had been reduced to a minority'. The only tangible difference between the above three cases (Andhra Pradesh, Haryana and Karnataka) and the recent developments in Goa is that in the case of Goa, the ruling party at the Centre was adversely affected by the actions of the Governor, whereas in Andhra Pradesh, Haryana and Karnataka the Governor's actions helped the ruling party at the Centre. Incidentally, on all these occasions, the ruling party at the Centre was the Congress-I.

It is interesting to note in this context the stand that was adopted by the Congress-I on the question of whether the majority of a Chief Minister should be tested on the floor of the Assembly or by the Governor. In its memorandum to the Sarkaria Commission the Congress-I stated that it was

not necessary for the Governor to summon the legislature to enable him to check and verify the limited question as to who is in majority. He must be able to do it by virtue of his experience, assessment of the situation, talks with the

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political leaders and his own judgement based on the data available. (Report 1987:667 Emphasis added)

Of special significance is the case of a Governor appointed by a non-Congress government at the Centre, who attempted (unsuccessfully at that) to use the gubernatorial office to inject internal democracy within the Congress party. In November 1990, the then Governor of Karnataka, Bhanu Pratap Singh, questioned the propriety of the then Congress President, Rajiv Gandhi, announcing a change in the leadership of the Congress Legislature Party. The Governor adopted the stand that the appointment or removal of Chief Ministers was the prerogative of the representatives of the people and *not the head of the party*. (emphasis added)

He went on to add that he advised the Central Government to declare President's Rule in the State as he wished to establish the convention that that it was the prerogative of the MLAs and not of the so-called High Command to remove and elect the CMs of States.

THE origin of the controversies that have surrounded the office of the Governor can be traced to two factors: a) the manner in which Governors have been appointed; and b) the individuals who have been appointed to this august office. The Sarkaria Commission too has highlighted the fact that

much of the criticism against the Governors could have been avoided if their selection had been made on correct principles... (Report 1988:121)

Article 156 of the Constitution states that the Governor shall be appointed by the President of India for a term of five years and shall hold office at the pleasure of the President. A perusal of the Constituent Assembly debates would show that though the Governor was to be appointed by the President on the advice of the Union Council of Ministers, it was expected that the Chief Minister of the concerned State would be consulted prior to the appointment. Such a convention, it was hoped, would result in cordiality in the relations between the Governor and the Chief Minister on the one hand and the Centre and the States on the other. Under Nehru's and Shastri's Prime Ministership this convention was, by and large, followed. Subsequently this convention was thrown to the winds and Governors were forcibly thrust on unwilling States.

In the post-1967 period, all political parties that have come to power at the Centre are guilty of having appointed Governor's without consulting the Chief Ministers of the concerned States. This

problem has become even more obvious in those States where a different political party/alliance is in power as compared to the Centre. The manner in which the BJP State Governments protested in 1991-92 when Governors of their States were replaced by the Centre without consulting them and the unhappiness expressed in 1990, by the then Chief Minister of Karnataka, Veerendra Patil, when the National Front Government at the Centre initiated moves to replace the Governor of the State without consulting the Chief Minister can be cited as examples in this regard.

The violation of this convention of consulting the Chief Minister before appointing a Governor has essentially been triggered off by the fact that the Central Government has attempted to use the office of the Governor to further its political interests *vis-a-vis* the States. It often appears as if a Governor is specifically sent to a State (especially when different parties are in power at the Centre and the State) with the unmistakable intention of destabilising the State Government and ensuring its early dismissal. As a result, the norms which were required to be borne in mind while selecting the individuals to occupy this office have been thrown to the winds. It was the fond hope of the framers of the Constitution that eminent people from various walks of life (not politicians) would be appointed as Governors. Intervening in the debate in the Constituent Assembly, Jawaharlal Nehru had specifically raised the issue:

...would it not be better to have a more detached figure (as Governor)...acceptable to the Government of the province...on the whole it probably would be desirable to have...eminent people, sometimes people who have not then too great a part in politics.

(Constituent Assembly Debates, Vol. 3, pp. 455-56)

The intention was that such individuals (eminent citizens) would bring honour and glory to the office of Governor. However, over the years, a majority of those appointed as Governors have been active politicians and retired (loyal?) bureaucrats. Governorship has also become an office of 'political accommodation' for political rejects, trouble-shooters, defeated and defecting politicians. Commenting on the background of those appointed as Governors, the Sarkaria Commission stressed that

...over 60 per cent of the Governors had taken active part in politics, many of them immediately prior to their appointment. Persons who were eminent in some walk of life constituted less than 50 per cent. (Report, 1988, p. 122)

A more serious development is that many who have occupied Governorship have subsequently returned to active politics. In fact the example of a politician can be cited who has alternatively been

the Chief Minister and Governor six times during the last two decades. When active politicians are appointed as Governors, it is but natural that the office of Governor will become controversial and a major source of federal tensions.

The Sarkaria Commission has suggested that the following criteria should be borne in mind when appointing Governors: a) they should be eminent in some walk of life; b) from outside the State; c) not too intimately connected with local politicians; and d) not actively involved in politics especially in the recent past. A strict adherence to these norms would go a long way in restoring the credibility of the Governor's office.



SERIOUS thought must also be given to the question of the desirability of continuing with the existing arrangement of the Union Council of Ministers advising the President of gubernatorial appointments. The Union Council of Ministers is essentially a 'central authority' and it would be in keeping with the federal spirit if a 'federal body' were to be entrusted with the responsibility of advising the President on this crucial issue of Gubernatorial appointments. Such a 'federal body'—consisting of those who represent both the Centre and the States—would symbolise the quintessence of federal unity. Daniel Elazar has rightly emphasised that federalism—and federal unity—is both an expression of political diversity and an accommodation of it. Such a 'federal body' could verily be the 'glue' that holds the federal system together.

The Inter-State Council is one such 'federal body' which could be assigned this task. Created in 1990 by the National Front Government under the provisions of Article 263, the Inter-State Council consists of the Prime Minister as the Chairman, a few senior Union Ministers and the Chief Ministers of all the States. However, not much has been heard of the Inter-State Council after the Congress party came to power in 1991. In the context of the emerging competitive party system in India, revitalising and strengthening the Inter-State Council appears to be the only feasible alternative to ensure Centre-State cordiality. While commenting on the role of the Inter-State Council, the Sarkaria Commission had opined that involving the Council in matters relating to gubernatorial appointments would result in the politicisation of such appointments. Given the fact that gubernatorial appointments have over the years been highly

politicised, involving the Inter-State Council could verily pave the way for harmonising Centre-State relations as against the antagonistic postures that have come to be adopted by both the Centre and the States.

The Inter-State Council would be an ideal forum for 'investigating and resolving multi-sectoral inter-governmental disputes'. If Governors were to be appointed by the President on the advice of the Inter-State Council it would imply an active role for the Chief Ministers in the process. A counter-check would then be provided to ensure that the right people are appointed to this august office. Within the existing constitutional arrangement, strengthening the role of the Inter-State Council appears to be the one of the best ways of ensuring that the office of the Governor enjoys the glory and respect that was envisaged by the framers of the Constitution. In the final analysis—as Daniel Elazar stressed—the essence of federalism is to be found not in a set of institutions but in the institutionalisation of relationships between the participants in the polity. ■

References

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