

REMOVAL OF GOVERNORS: A HOAX ON THE CONSTITUTION

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INTRODUCTION

A governor is the link between the Union and the state. He takes care of the interests of the nation as a whole as against the interest of the state itself. If and when there is a conflict of interest, he looks after the interest of the whole Union.

Though the Governor is the executive head of the State and a part of the State Legislature and the administration of the State is carried on in his name, the people of the State or their representatives have no say in the matter of his appointment. While the President is elected by the representatives of the people, namely, the Members of Parliament and the Members of the State Legislatures, the Governor is merely appointed by the President which really means, by the Union Council of Ministers. In as much as the Governor holds office during the pleasure of the President, there is no security of his tenure. He can be removed by the President at any time. There is no provision for impeaching the Governor by the State Legislature. Indeed, if the Governor misbehaves or acts in a manner against the interests of the people of the State, as perceived by the State Legislature they cannot do anything except perhaps complain to the President. It may also be noticed that the Chief Minister is appointed by the Governor. Where one party gets a clear majority, the Governor may have no discretion or choice in the matter but where no single party or a pre-election group/coalition gets a clear majority, the Governor has to exercise his judgment in the matter of whom he should invite¹.

BACKGROUND

The trend of removal of governors started in 1977 with the victory of the Janata Party², has been followed till date, with each party that comes to power at the Centre trying to assert its domination by appointing such heads of states whose ideologies are in consonance with the party's ideology.

¹ Justice Shri B.P. Jeevan Reddy, 'The Institution Of Governor Under The Constitution', May 11, 2001, at 891

² Sanjay Kumar, 'Governors in the firing line' (<http://www.thehindu.com/> 2014)
< <http://www.thehindu.com/opinion/lead/governors-in-the-firing-line/article6183228.ece> >
accessed November 19 2014.

When the Janata Party came to power in 1977 by defeating the incumbent ruling party, the Indira Gandhi led Congress, the country was reeling from the effect of the National Emergency that was proclaimed by Gandhi in 1975. To overcome the oppression borne by the opposition leaders during the emergency and to establish an atmosphere free of the previous government's rule, the Janata Party appointed new governors by sending its recommendations to that effect to the then President B. D. Jatti, and although the President, in his right mind and in the interests of Indian polity, sent back the recommendation, he eventually had to assent to it when it was sent to him after reconsideration³. This trend has ever since remained healthy in the Indian political scene, with each change of Government making an attempt to establish its superiority by way of controlling the Governor's post in an arbitrary manner and in furtherance of their party's policies. Thus, as there is no master – servant relationship between the Governor and the Central Government, it follows that the Governor is not accountable to the Central Government and was not under the control of the Government of India⁴. In the case of *State of Orissa v. Vidybhusan*⁵, which was one of the first cases regarding the term of office of Governor, interpretation of Article 156 of Constitution of India, it was held that the President could withdraw his pleasure from the constitutional post of Governor and dismiss him without citing any reasons. The courts could not interfere in the aforementioned case on the grounds of absence of any cause. It has also been held that the appointment of a Governor was political in nature and thus he could be removed from his constitutional post owing to political considerations⁶ These cases did not require reasons to be cited by the President while removing the Governor. The dismissal or the transfer of the Governor could take place without observing the principle of *Audi Alteram Partem*. The President may though exercise mala fide intention in such removal⁷ Article 156(1) provides that a Governor shall hold office during the pleasure of the President. Having regard to Article 74, the President is bound to act in accordance with the advice of the Council of Ministers. Therefore, even though under Article 156(1), the removal is at the pleasure of the President, the exercise of such pleasure is restricted by the requirement that it should be on the advice of the Council of Ministers.

SUPREME COURT INTERPRETATION

The question whether the removal of Governor is open to Judicial Review has been beautifully explained by the Court in the case *B.P. Singhal v. Union of India*, he Supreme Court held that the President, in effect the central government, has the power to remove a

³ Ibid.

⁴ Hargovind Pant v. Dr. Raghukul Tilak 1979 SCR (3) 972.

⁵ AIR 1963 SC 779(786).

⁶ Om Narain Agarwal v. Nagar Palika, Shahjahanpur AIR 1993 SC 1440 : (1993) 2 SCC 242.

⁷ Pratap Singh Raojirao Rane & ... v. Governor of Goa & Others, AIR 1999 Bom 53.

Governor at any time without giving him or her any reason, and without granting an opportunity to be heard. However, this power cannot be exercised in an arbitrary, capricious or unreasonable manner. The power of removing Governors should only be exercised in rare and exceptional circumstances for valid and compelling reasons. The mere reason that a Governor is at variance with the policies and ideologies of the central government, or that the central government has lost confidence in him or her, is not sufficient to remove a Governor. Thus, a change in central government cannot be a ground for removal of Governors, or to appoint more favourable persons to this post. A decision to remove a Governor can be challenged in a court of law. In such cases, first the petitioner will have to make a prima facie case of arbitrariness or bad faith on part of the central government. If a prima facie case is established, the court can require the central government to produce the materials on the basis of which the decision was made in order to verify the presence of compelling reasons.

The Court made an encouraging start, discussing the feudal origins of the 'doctrine of pleasure', observing that "*there is a distinction between the doctrine of pleasure as it existed in a feudal set-up and the doctrine of pleasure in a democracy governed by rule of law*". However, it is important to note that in provisions like [Article 311\(2\)](#), the drafters have included specific limitations on the doctrine of pleasure, which are absent in Article 156. The Court noted this difference, concluding however, that this did not preclude the existence of even the most limited restrictions on the exercise of the power of removal under Article 156. While the requirement of a fair hearing, or an inquiry (as contained in Article 311(2)) could not be read into Article 156, the basic requirement that the power not be exercised whimsically or capriciously must nevertheless be considered an essential part of the power of removing Governors⁸.

Where rule of law prevails, there is nothing like unfettered discretion or unaccountable action. The degree of need for reason may vary. The degree of scrutiny during judicial review may vary. But the need for reason exists. As a result when the Constitution of India provides that some offices will be held during the pleasure of the President, without any express limitations or restrictions, it should however necessarily be read as being subject to the 'fundamentals of constitutionalism'⁹

Further, it noted that while the President could not be called on to provide reasons for removal to the Governor, this does not preclude judicial review. The Court observed "*Therefore, while we do not accept the contention that an order under Article 156 is not justiciable, we accept the contention that no reason need be assigned and no cause need be shown and no notice need be issued to the Governor before removing a Governor*". An

⁸ Shantanu, 'The Supreme Court on removal of Governors', Critical Twenties, Aug19,2010

⁹ Shantanu, 'The Supreme Court on the removal of Governors', Critical Twenties, Aug 19, 2010

analogy was drawn to the power of Presidential pardon, which also allowed for a limited degree of judicial review. The Court elaborated this limited extent of review in the following words,

In the event of challenge of withdrawal of the pleasure, the court will necessarily assume that it is for compelling reasons. Consequently, where the aggrieved person is not able to establish a prima facie instance of arbitrariness or malafides, in his removal, the court will refuse to interfere. However, where a prima facie case of arbitrariness or malafides is made out, the Court can require the Union Government to produce records/materials to satisfy itself that the withdrawal of pleasure was for good and compelling reasons. What will constitute good and compelling reasons would depend upon the facts of the case. Having regard to the nature of functions of the Governor in maintaining centre-state relations, and the flexibility available to the Government in such matters, it is needless to say that there will be no interference unless a very strong case is made out. The position, therefore, is that the decision is open to judicial review but in a very limited extent.

While this serves as a good starting point, unfortunately the Court fails to go any further in elaborating the precise import of the broad terms employed in the above extract. Apart from the prohibition on using 'lack of confidence' as a ground for removal, the Court does not provide any idea of what the legitimate grounds may be, contenting itself with the observation that "*What would be compelling reasons would depend upon the facts and circumstances of each case*". Thus, while the decision serves the important function of providing that there must be *some* grounds on which the removal must be based, it is steadfastly quiet on *what* these grounds are. Further, since there is no requirement of disclosing the grounds for removal to the Governor, establishing the *prima facie* case required by the Court is also well-nigh impossible, except in rare cases.

Now, it is true that the degree to which the Court can review the removal of a Governor is necessarily circumscribed by the text of the Constitution, and the powers provided therein. Allowing for any more powers of review, or stricter guidelines on the removal of a Governor, would have done violence to the provisions of the Constitution. Within the confines of the Constitution as it exists, the Court has done the best it could for limiting arbitrary removal. Absent a Constitutional amendment, we are still a long way away from imposing a realistic limitation on the removal of Governors. However, Constitutional jurisprudence abounds with examples where symbolic *dicta* have served an important function in influencing the development of the law (*Marbury v. Madison* being an ideal example of the value of symbolism). Given the immense symbolic value of *BP Singhal*, it is nevertheless an important symbolic step towards accountability of the Centre in removing Governors.

RECOMMENDATIONS OF SARKARIA COMMISSION

Sarkaria Commission headed by Justice Rajinder Singh Sarkaria, which went into Centre-State relations, had given certain valuable suggestion regarding appointment and removal of governors. According to the commission, Governor's oath obliges him to "preserve, protect and defend the Constitution" and to devote himself "to the service of well-being of the people" of that State. This is done by him as the Governor of the State and in the interest of the State and not as "the agent of the Centre". It is another matter that because of the conduct and actions of some over the last several decades, they have earned this notoriety and the pejorative appellation of an agent. Article 156 does not lay down the grounds upon which a Governor may be removed by the President, nor does it require that the reasons be disclosed. It is assumed that the President shall use the power to meet with cases of gross delinquency such as bribery, corruption, treason and the like, or conduct unbecoming of the high office, or violative of the Constitution. The Commission then referred to the suggestions received by it with respect to the institution and role of Governor which inter alia established out that this office is of vital importance having multi-faceted role, that Governor is linchpin of constitutional apparatus, that Governor's office assures continuity of Government and that it should not be dispensed with¹⁰. The Commission proceeded to discuss the manner of selection of Governors, the term of their office, their eligibility for further offices after the expiry of their term and the retirement benefits available to them. The Commission then discussed the areas in which the Governor has to act in his discretion and the need for such discretionary powers. A Governor, as the Head of the State, holds a high constitutional office which carries with it important constitutional functions and duties; that the fact that the Governor is appointed by the President and that he holds office during the pleasure of the President does not make the Governor an employee or a servant or agent of the Union Government; and that his independent constitutional office is not subordinate or subservient to the Union Government and he is not accountable to them for the manner in which he carries out his functions and duties as Governor". Thus it was submitted that "a Governor should ordinarily be permitted to continue in office for the full term of five years; and though he holds office during the pleasure of the President, he could be removed before the expiry of the term of five years, only in rare and exceptional circumstances, by observing constitutional norms and requirements." The President in exercising power under Article 156(1) should act in a manner which is not arbitrary, capricious or unreasonable. In the event of challenge of withdrawal of the pleasure, the court will necessarily assume that it is for compelling reasons. Consequently, where the aggrieved person is not able to establish a prima facie instance of arbitrariness or *mala fides*, in his removal, the court will refuse to interfere. However, where a prima facie case of arbitrariness or *mala fides* is made out, the Court can require the Union Government to produce records/materials to satisfy itself that the withdrawal of pleasure was for good and compelling reasons. What will constitute good

¹⁰ Hindi IAS 100 , < http://www.ias100.in/insight_archive_details.php?id=25>

and compelling reasons would depend upon the facts of the case.¹¹ Having regard to the nature of functions of the Governor in maintaining centre-state relations, and the flexibility available to the Government in such matters, it is needless to say that there will be no interference unless a very strong case is made out. The position, therefore, is that the decision is open to judicial review but in a very limited extent.

THE VENKATACHALIAH COMMISSION

The Venkatchaliah Commission (2002) similarly recommended that ordinarily Governors should be allowed to complete their five-year term. If they have to be removed before completion of their term, the central government should do so only after consultation with the Chief Minister.

THE PUNCHHI COMMISSION

The Punchhi Commission suggested that the phrase “during the pleasure of the President” should be deleted from the Constitution, because a Governor should not be removed at the will of the central government; instead he or she should be removed only by a resolution of the state legislature. The above recommendations however were never made into law by Parliament. Therefore, they are not binding on the central government.

CONCLUSION

The States today are politically and economically much stronger as compared to the time of independence of India and are well bound to the nation, as also they recognise the interdependence and the advantages of being associated with the Union of India. At the same time, the Central Government remains at the apex of the political system. A transfer in the power of appointment and removal of a Governor to the State would not undermine the power of the Centre, for the Governor would still be bound to the Centre in matters of referring bills, recommendation of State Emergency when the situation in reality requires such a step to be taken, and in furthering general relations of good will between the Centre and the States, etc. In the event that the power of appointment and removal of a Governor rests not with the Centre but with the State legislature itself, the Governor would be rather independent and free to act in a manner that best furthers the interests, not of the Centre, but of the concerned State. This practice of giving the power to the State Legislature to appoint the Governor, the Head of the State, can be found in relation to the provisions in the Constitution of South Africa,¹² South Africa is, like India, divided into different States, or provinces, with the leader of each province acting in a manner equivalent to that of a

¹¹ Ibid

¹² Constitution of South Africa 1996

Governor in the Indian context. This practice, if adopted in India, would indirectly transfer the power to the people and also ensure increased cooperation between the legislature and the executive, as both the organs would be inter-dependent on each other. It is submitted that the need of hour is that the Constitution should be amended to give security of tenure to the Governor. The Governor is the head of the state and he cannot be removed at one stroke just after the change of protector at the centre. The recommendations given by Sarkaria committee have not been fully implemented and governor is still under pressure to act as per the commands of government at centre. In the event that the power of appointment and removal of a Governor rests not with the Centre but with the State legislature itself, the Governor would be rather independent and free to act in a manner that best furthers the interests, not of the Centre, but of the concerned State. The governors should be treated with dignity for the proper functioning of state and the arbitrary exercise of power should be prohibited. Gandhi in Harijan has written that, much of the interference power should be provided to governors. They should have enough power to influence ministerial policy for the better. In their detached position they would be able to see things in proper prospective and thus prevent mistakes by cabinets. Thus it is submitted that a Governor should ordinarily be permitted to continue in office for the full term of five years; and though he holds office during the pleasure of the President, he could be removed before the expiry of the term of five years, only in rare and exceptional circumstances, by observing constitutional norms and requirements.