3. Research Paper

Introducing

Article 153 of the Constitution requires that there shall be a Governor for each State one person can be appointed as Governor for two or more States. Article 154 vests the executive power of the State in the Governor. Article 155 says that "The Governor of a State shall be appointed by the President by Warrant under his hand and seal". Article 156 provides that "The Governor shall hold office during the pleasure of the President". The term of the Governor is prescribed as five years. The only qualification for appointment as Governor is that he should be a citizen of India and must have completed the age of thirty-five years. Article 159 prescribes the oath, which a Governor has to take before entering upon his office. He has to swear in the name of God/solemnly affirm that he will faithfully execute the office of Governor (or discharge the functions of the Governor) of... (Name of the State) and will to the best of my ability preserve, protect and defend the Constitution and the...
law and that I will devote myself to the service and well-being of the people........(name of the State).

While 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.

Today the situation is that different political parties are in power in different States. In other words, the situation obtaining between 1952 and 1967, when one party controlled both the Parliament and State legislatures no longer continues, in such a situation and because the Governor owes his appointment and his continuation in the office to the union council of ministers, in matters where the central Government and the State Government do not see eye to eye, there is the apprehension that he is likely to act in accordance with the instructions, if any, received from the Union Council of ministers rather than act on the advice of his Council of ministers. Indeed, the Governors today are being pejoratively called the agents of the Centre. It is true that the Central Government is not expected to give any instructions which compromise the status and position of the Governor nor is it expected to remove him for not implementing the instructions given by it. The experience for the last several years belies this hope. As Seervai has pointed out in his commentary: "As the President acts on the advice of his Ministry, it may be contended that if the Governor takes action contrary to the policy of the Union Ministry, he would risk being removed from his post as Governor and therefore he is likely to follow the advice of the Union Ministry.
The role of Governors has come in for severe criticism sometimes, bordering on condemnation in the context of reports they submit under and within the meaning of Article 356. Many a time the Governor has not covered himself with glory in that behalf notwithstanding the recommendations guiding the discharge of their functions in the Sarkaria Commission Report (to which we shall presently refer) and the decisions of the Conference of Governors. Many Governors continue to behave in a manner not consistent with true spirit of the constitution. This would be evident from the decision of the Supreme Court in S.R. Bommai V. Union of India (AIR 1994 SC 1918). A few observations from the said judgement may be opposite. In his judgement delivered Kuldip Singh J., Sawant J. commented thus upon the conduct of then Governor of Karnataka.

"It was improper on the part of the governor to have arrogated to himself the task of holding, firstly, that the earlier 19 letters were genuine and were written by the said legislators of their free will and volition. He had not even cared to interview the said legislators but had merely got the authenticity of the signatures verified through the legislature secretariat. . . We are of the view that this is a case where all canons of propriety were thrown to winds and the undue haste made by the Governor in inviting the President to issue the proclamation, under Article 356(1) smacked of malafide. The action of the Governor was more objectionable since as a high constitutional functionary, he was expected to conduct himself more fairly, cautiously and circumspectly. Indeed it appears that the Governor was in a hurry to dismiss the Ministry and dissolve the assembly"

While dealing with the conduct of then Governor of Meghalaya, the learned Judge made similar observations and observed finally: "the unflattering episode shows in unmistakable terms, the Governor's
unnecessary anxiety to dismiss the Ministry, and dissolve the assembly and also his failure as a constitutional functionary to realize the binding, legal consequences of and give effect to the orders of the court". Similar observations were made by B.P. Jeevan Reddy J. in the Judgement delivered by him for himself and S.C. Agarwal J. and with whose judgment S.R. Pandian J. agreed fully.

Recommendations of Sarkaria Commission:

A Commission Headed by Justice R.S. Sarkaria a former Judge of the Supreme Court (and who is now a Member of the present Commission), was constituted to "examine and review the working of the existing arrangements between the Union States in regard to powers, functions and responsibilities in all spheres and recommend such changer or other measures as may be appropriate". The Commission first examined the historical background to the institution of Governor, the constitutional provisions concerning the Governor and the scope of these provisions and then pointed out the three main facets of Governor's role. The three facets so-pointed out are: (a) as the constitutional Head of the State operating normally under a system of Parliamentary democracy; (b) as a vital link between the Union Government and the State Government; and (c) as an agent of the Union Government in a few specific areas during normal times [e.g. Article 239 (2)] and in a number of areas during abnormal situations [e.g. Article 356 (1)]. Pausing here, we must say that really speaking, the Constitution did not envisage the Governor as an agent of the Centre. By making reports under Article 356, the Governor does not become an agent of the Central Government. Such a report has to be made by the Governor as required by his oath which 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. If he is honestly
satisfied, in a given situation that the government of that State cannot be carried on in accordance with the provisions of the Constitution, it becomes his duty to make a report to that effect to the President, this he does 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.

The matters in which the Governor, according to the Commission, is expected to use his discretion are:-

1. In Choosing the Chief Minister
2. In testing majority of the government in office
3. In the matter of dismissal of the Chief Minister
4. In dissolving the legislative assembly
5. In recommending President’s Rule
6. In reserving bills for President’s Consideration.

The person to be appointed as a Governor.

1. Should be an eminent person.
2. Must be a person from outside the State.
3. Must not have participated in active politics at least for some time before his appointment;
4. He should be a detached person and not too intimately connected with the local politics of the State;
5. He should be appointed in consultation with the chief Minister of the State, Vice-President of India and the Speaker of the Loksabha;
6. His tenure of office must be guaranteed and should not be disturbed except for extremely compelling reasons and if any action is to be taken against him he must be given a reasonable opportunity for showing cause against the
grounds, on which he is sought to be removed. In case of such termination or resignation by the Governor, the Government should lay before both the Houses of Parliament a Statement explaining the circumstances leading to such removal or resignation, as the case may be;

7. After demitting his office, the person appointed as Governor should not be eligible for any other appointment or office of profit under the Union or a State Government except for a second term as Governor or election as Vice-President or President of India, as the case may be.

8. At the end of his tenure, reasonable post-retirement benefits should be provided.

CONCLUSION

We are equally of the opinion that the changes suggested above would make the Governor an independent and fair arbiter whenever a dispute arises whether the Chief Minister/ Council of ministers have lost the confidence of the House- an area where many a Governor has not covered himself with glory. He would rather insist upon a floor test or allow the matter to be fought out on the floor of the assembly. He would not resort to counting of Heads in the Raj Bhavan. Even in the matter of selection of Chief Minister, where no single party had obtained a clear majority, he would fairly follow the conventions established in this behalf and not be led away by any instructions from the Centre. It has become essential, in the interest of our constitutional system, to retrieve and restore the glory and dignity of this office.