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A Comprehensive Scrutiny on the Discretionary Powers of Governor: Controversial Vicinity Surrounding It

ABISHEK JAMES¹ AND GAURAV JONNAGADLA²

ABSTRACT

The office of Governor in India is meant to be an independent and politically neutral institution under the Indian Constitution, but it has been a source of controversy and debate in recent years. It is due to the numerous instances of misuse of the gubernatorial powers that the Governor has attracted infamous nicknames like 'Puppet', 'rubber stamp', and the 'agent of the Centre'. The powers and functions of the Governor are not clearly defined in the Indian Constitution, leading to controversy over their role.

With the advent of regional parties and advanced politics in India, the role of the Governor has acquired immense importance in the current political scenario. In the parliamentary system of government, the office of the Governor in a state has the capability to be at the centre of controversies for various reasons, the most controversial one being the range of discretionary powers that the governor enjoys. The misuse of the Governor's office can be divided into pre and post S.R Bommai judgement in the year of 1994. Recently, some of the Chief Ministers have even advocated for the abolition of the post of Governor. The Kerala government also put forward a major recommendation seeking intervention to limit the discretionary powers of the governor.

This paper aims to examine the controversies surrounding the role of governor in the current scenario and also addresses all the previous controversies and ends up with recommendations in order to sort out the issue.

Keywords: Governor, Controversies, Constitution, Discretionary powers, Abolition, Gubernatorial.

I. INTRODUCTION

The office of the Governor has been involved in various controversies in multiple states on account of the liberal and often controversial interpretation of the Governor's discretionary power, with accusations of the Governor overstepping their boundaries and interfering in the day-to-day functioning of the state government. Additionally, the governor's role in the state's

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law and order and the governor's discretion in dismissing the state government has also caused significant controversy. The scope of controversies arises when there are instances of the Governor's actions overstepping their constitutional bounds and interfering in the political affairs of the state.

Controversies in the post of governor can occur at any level of government, whether it be the governor of a state or the governor of a territory. Some controversies arise from policy decisions made by the governor, while others stem from personal conduct or financial dealings. These controversies can range from minor scandals to major crimes and can have serious consequences for both the governor and the state they govern. For example, a governor who is embroiled in a corruption scandal may face criminal charges and potentially spend time in prison, while a governor who is accused of ethical violations may face impeachment proceedings and be removed from office. These controversies can also impact public trust in government and the political process, which can have far-reaching consequences for the health of a democratic society.

Governor is thereby expected to be the point of conversion between the centre and the state³. Eventually, over the period of time, the Governor has become a tool off centre to interfere with the working of state governments. Recently, it can be inferred from the dispute between the governor and chief minister of Tamil Nadu, where the dispute between raised from political and ideological differences between the ruling party and the Governor. The Tamil Nadu Government sought a recall of Governor⁴. The Chief Minister of Tamil Nadu and his party have accused the Governor of overstepping his constitutional bounds and interfering in the state's administration, while the Governor has defended his actions as being necessary to ensure the rule of law and protect the interests of the state and its citizens⁵. The specific issues in the dispute can vary, but it often involves the Governor's role in appointments, transfers, and investigations, as well as his use of discretionary powers. Hence, governor`s position is considered one of the most politicized offices within the constitution.

(A) Research scope and objectives

- To have a depth analysis regarding the discretionary powers given to governor by the Indian Constitution

³ Vershika Sharma ‘Governor and Constitutional Conundrum: A relook at the Discretionary powers of the Governor in case of Hung Assembly ‘2020

⁴ India Today, Why Governor versus state battle is raging in Tamil Nadu, Kerala and Telangana. <https://www.indiatoday.in/india/story/why-governor-versus-state-battle-is-raging-in-tamil-nadu-kerala-and-telangana-2319229-2023-01-09> (last visited on Jan 24 2023)

⁵ Id

- To analyse the instances how the governor misuses their discretionary powers
- To identify how the discretionary powers of the governor lead to controversies

(B) Research questions

Whether there is a gap in the constitution which facilitates the governor to misuse their discretionary powers?

(C) Research problem

The post of governor is meant to be independent and apolitical, but it is evident in many instances that the governor is politically motivated and is subjected to many controversies and confusion with the state government by misusing their discretionary powers.

(D) Hypothesis

For the purpose of this research it is assumed that the office of governor is politically motivated and the governor is misusing his discretionary powers.

II. BACKGROUND OF THE PROBLEM

‘A Governor is expected to act only as a nominal head while the real power of governance and administration lies with the chief minister and their council of ministers’⁶. A Governor is a nominal executive head of the respective state where he is appointed. Governor forms an integral part of the state executive where he has the authority and acts as the chief executive head. The office of Governor is a constitutional post established under the Article 153 of the Indian Constitution. Article 153 orders that there shall be a Governor for each state.

The Governor of State is appointed by the President of India⁷ and the Governor is known as the ‘*de jure*’ head of a State. The executive powers of the State are vested in the hands of Governor. The Governor exercises the constitutional functions under the aid and advice of the Council of Ministers unless the Constitution specifically requires them to apply their independent mind⁸.

Some of the functions of the Governor involve, summoning, proroguing, and dissolving the state assemblies⁹, promulgating Ordinances¹⁰, assenting to Bills¹¹, and appointing the Chief Minister and his Council of Ministers¹². The Governor also appoints the Advocate General of

⁶Supra note 5

⁷INDIA CONST. art 155

⁸INDIA CONST. art 163

⁹INDIA CONST. art 174 subs by the Constitution (First Amendment) Act 1951

¹⁰INDIA CONST. art 213

¹¹INDIA CONST. art 200

¹²INDIA CONST. art 164

the state¹³, chairman and members of the State Human Rights Commission and the State Public Service Commission. During the time of hung assembly, the Governor invites the political parties to upright their claims to form the Government.¹⁴

The Governor can direct the 'Floor Test' if he thinks that the Chief Minister has lost the confidence of the legislative assembly¹⁵. Certain powers, such as sending report to the President under Article 356 and reserving a Bill for the President's consideration under Article 200, may be exercised at the discretion of the Governor.

Vested with such a wide range of powers, the Governor is required to ensure that the state functions in accordance with the Constitution of India. However, there have been numerous instances of misuse of these powers to favour the ruling party in the Union government. In light of these developments, it is significant to revisit the Constituent Assembly Debates on the position of Governor in India in order to understand the intent of the framers of the Constitution.

III. CONTROVERSIES SURROUNDING THE POST OF GOVERNOR

The Constitutional Position of the Governor of a state in the current legal scenario found roots in the Indian Governance in early 1920's during British Raj¹⁶. The role and post of Governor has acquired immense importance with the advent of regional parties and coalition politics in India. This can be seen in the current political scenario.

The three major controversies which have subjected the Governor to heavy criticism are:

- It's political appointments and relationship with state government.
- Uncertain tenure, and
- Discretionary powers.

IV. APPOINTMENT

“The appointment and role of Governors have been persistent theme of malfunctioning clog in the federal political machinery in the country since the late 1960's”¹⁷. The framers of the Indian Constitution contemplated Governor to be an apolitical and independent person. However, we see that the process of the Governor's appointment has never been apolitical. In the picture of law, the Governors are constitutionally appointed by the President¹⁸. But the apparent politics

¹³INDIA CONST. art 165

¹⁴INDIA CONST. art 163(2)

¹⁵Shiv Sena v. Union of India, writ petition (civil) no. 1393/2019 (SC)

¹⁶ Constituent Assembly debates Vol. VIII, p. 213-217

¹⁷ Mahendra Prasad Singh, Discretionary Powers of the President and Governors in India in Constitution and practice September 2017

¹⁸ *Supra* note 9

of this process has been criticised extensively. It is generally observed that ex-politicians, ex-military, ex-army, and civil servants are chosen for the post of Governor. But ex-politicians with significant ties with the ruling party in the Centre are generally appointed as the Governor in majority cases. These appointees give rise to frequent tussle between the Governor and the elected state governments. Instead of applying their influence free mind under the constitutional draft, their decisions are guided and delegated by the will of their political superiors. The post of Governor is being used as a post retirement job for the veteran politicians as it is seen that the average age of the Governors in India are above 70 years of age which itself becomes a testimony of the improper appointment of the post.

Also, another main area of controversy surrounding the role of the Governor is their relationship with the state government and the council of ministers. The Constitution of India states that the Governor is expected to act in accordance with the advice of the council of ministers headed by the Chief Minister, except in certain cases where the Constitution specifically allows the Governor to act independently¹⁹. However, there have been instances where Governors have been accused of acting against the advice of the council of ministers and interfering in the functioning of the state government.

One such example is the dismissal of the democratically elected government of Arunachal Pradesh in 2016 by the President of India on the recommendation of the Governor, which was widely criticized as being a politically motivated move²⁰. Later he has been sacked by the President of India after the Supreme Court has quashed his unconstitutional acts.²¹ Similarly, in 2018 the governor of Tamil Nadu, Banwarilal Purohit, wrote to the chief minister Edappadi Palaniswamy seeking an explanation for the conduct of his ministers and also gave directions to the chief secretary, this was seen as interference in the working of the state government.

The Constitution of India gives the Governor the power to appoint the Chief Minister and other ministers²², but there have been instances where the Governor has been accused of using this power to appoint Chief Ministers and ministers who are not supported by the majority of the elected members of the legislative assembly. Additionally, in recent years, there have been instances of Governors being accused of playing a partisan role and aligning themselves with a

¹⁹ *Supra* note 10

²⁰ Abhik Chimni ‘‘Arunachal Pradesh: The Dismissal of an Elected Government and After’’ *The citizens* 2016-01-31, <https://www.thecitizen.in/index.php/en/NewsDetail/index/3/6675/Arunachal-Pradesh:-The-Dismissal-of-an-Elected-Government-And-After> (last visited on Jan 25 2023)

²¹ Rahul Srivastava ‘‘Arunachal Pradesh Governor Jyoti Prasad Rajkhowa Sacked’’ *NDTV*, <https://www.ndtv.com/india-news/jyoti-prasad-rajkhowa-removed-as-arunachal-pradesh-governor-report-1457717> (last visited on Jan 20 2023)

²² INDIA CONST. art 164(1)

particular political party or ideology. This has led to accusations that the Governor is not acting in an impartial and neutral manner, as required by the Constitution of India.

V. TENURE

It can be seen that the Governor remains in office of post during the pleasure of the President²³. It is the duty of the President to dismiss a governor whose acts are upheld by courts are unconstitutional and malafide.²⁴ The President on the other hand is however bound to follow the aid and advice of the Prime minister and the Council of Ministers under him²⁵. This subsequently means that the Governor's tenure is uncertain and is at the mercy of the ruling party at the Centre because there is always a possibility of removal of the post of Governor if he/she denies to act according to the commands and orders of the ruling party at the Centre. Thus, an insecure tenure of the Governor compromises the independent authority of the post.

1. Discretionary powers: Another area of controversy surrounding the role of the Governor is their use of discretionary powers. The Constitution of India gives the Governor certain discretionary powers, such as the power to grant pardons and reduce sentences in certain cases²⁶, the power to make appointments to various state-level constitutional bodies and to make recommendations for the imposition of President's rule in the state²⁷. However, there have been instances where the use of these discretionary powers by the Governor has been perceived as being politically motivated and not in the best interests of the state. For example, in 2018, the Governor of Karnataka Vajubhai Vala invited the Bharatiya Janata Party to form the government, after the assembly elections resulted in a hung assembly²⁸. This move was widely criticized as being against the popular mandate.
2. The Governor got his own discretionary power after the 42nd Amendment Act²⁹. Article 163 of the Indian Constitution recognises and put-forth the discretionary powers to the Governor. The President completely acts upon the aid and advice of the Council of Ministers under the head of the Prime minister and unlike the President the Governor

²³ INDIA CONST. art 156(1)

²⁴ Suyash Verma, Origin and Scope of Doctrine of Pleasure in India, *Desi Kanoon*, <https://www.desikanoon.co.in/2014/06/origin-and-scope-of-doctrine-of.html> (last visited on Jan 23 2023)

²⁵ INDIA CONST. art 74(1) subs by The Constitution (Forty Second Amendment) Act 1976

²⁶ INDIA CONST. art 161

²⁷ INDIA CONST. art 356

²⁸ THE INDIAN EXPRESS, Karnataka election: Governor Vajubhai Vala invites BJP to form govt, gives Yeddyurappa 15 days to prove majority, <https://indianexpress.com/elections/karnataka-assembly-elections-2018-governor-vajubhai-vala-invites-bjp-to-form-govt-gives-15-days-to-prove-majority-yeddyurappa-congress-5179512/> (last visited on Jan 24 2023)

²⁹ Professor Narendra Kumar Constitutional Law of India Forty Second Amendment Eighth edition pp 1047

exercises his own discretion in certain regards.³⁰ This distinction of discretion was made clear by the judgement of the Supreme Court of India in the case of *Shamsher Singh v. State of Punjab*³¹.

3. It is clear from Article 74(1) that the President has to following the aid and advice of the Cabinet and nothing is left to his discretion of the president or excepted from that field by this article. On contrast, it can be seen that Article 163 of the Indian Constitution which lays down the provisions for the Governor, expressly excepts certain matters in which they are allowed under the constitution, to exercise his discretion.
4. The most controversial discretionary power conferred by the Governor is under Article 356 of the Indian Constitution. The Governor has the authority to send a report to the President informing that the state government can no longer be run in accordance with the Indian Constitution. The President, if he/she is satisfied with the same, can proclaim Presidential rule, i.e., state emergency in the respective state. Within a time span of two months, this proclamation has to be ratified by both the Houses of the Parliament. If the proclamation is not ratified, the same lapses while if gets ratified by both the Houses of Parliament, the state emergency continues for a period of 6 months.
5. This power has been widely misused by successive Central governments in India. The popularly elected state governments were dismissed on the report of the Governor. This misuse is not new and started right from the era of Nehru. On 16th June 1951 emergency was imposed in the state of Punjab just because the Prime minister Jawaharlal Nehru had some difference of opinion with the CM of Punjab, Dr. Gopichand Bhargava. Subsequently, the Prime minister asked the President of India, Rajendra Prasad, to proclaim emergency³².
6. The centre has often used this provision to dismiss the parties of the State governments and also has used the office of the Governor to prevent the majority party or coalition to the office. For instance, the central government removed democratically elected governments in Andhra Pradesh and Jammu and Kashmir in the 1980 decades.
7. Similarly, in 1957 the E.M.S. Namboodiripad government in Kerala was dismissed based on the report produced by the Governor of the respective state³³.

³⁰ *Supra* note 27

³¹ *Shamsher Singh & Anr v. State of Punjab*, (1975) SCR (1) 814

³² What is Article 356, which PM says Indira Gandhi misused 50 times? Firstpost, <https://www.firstpost.com/explainers/what-is-article-356-which-pm-says-indira-gandhi-misused-50-times-12132492.html> (last visited on Jan 24 2023)

³³ V Krishna Ananth, *The Dismissal of the First Elected Communist Government in Kerala: An Abuse of Article*

8. Article 174 of the Indian Constitution gives the power to summon, prorogue and dissolve the House to the Governor on the aid and advice of the Cabinet. But instances of state of Rajasthan in 2020 and the state of Arunachal Pradesh in 2016 suggests that the ruling party at the Centre is in a position to take undue advantage through the Governor at the respective state. It is only due to such instances of discretion that the Supreme Court had to step in and limit the gubernatorial discretion.

VI. MISUSE OF DISCRETIONARY POWERS

The Governors have been prone to act according to the instructions by the ruling party at the Centre, as he himself is an appointee of the Union Government. The governor has the discretionary powers in

- Choosing a Chief Minister
- Requiring a Chief Minister to prove their majority
- Dismissing a Chief Minister
- Dissolving the legislature
- Recommending Presidential Rule

VII. REASONS FOR THE USAGE OF DISCRETIONARY POWERS GIVING SCOPE FOR CONTROVERSIES

- Lack of clear guidelines: The Constitution of India does not clearly define the powers and functions of the Governor, leading to confusion and controversy over their role. This has led to accusations of Governors overstepping their bounds and interfering in the day-to-day functioning of the state government.
- Political appointments: The appointment of Governors is often seen as politically motivated, leading to accusations of bias and partiality. This has led to concerns that Governors may act in the interests of the party or individual who appointed them, rather than in the best interests of the state.
- Governor's discretion in dismissing the state government: The Governor has the discretion to dismiss the state government if it fails to function according to the Constitution, this discretion has been a source of controversy as some governors have

356 of the Constitution, <https://www.thepolisproject.com/read/the-dismissal-of-the-first-elected-communist-government-in-kerala-an-abuse-of-article-356-of-the-constitution/> (last visited on Jan 25 2023)

been accused of using this power to dismiss state governments on political grounds.

- **Interference in law and order:** The Governor's role in maintaining law and order in the state has also been a source of controversy, with some accusing Governors of using their powers to interfere in the functioning of the police and the judiciary.
- **Appointment of chief ministers:** The Governor's role in the appointment of chief ministers has also been a source of controversy. Some have criticized the Governor for using their discretion in appointing chief ministers on political grounds, rather than on the basis of merit.
- **Lack of accountability:** There are not many mechanisms in place to hold Governors accountable for their actions, which has led to concerns that Governors may act with impunity.
- **Political pressure:** Some governors have come under political pressure to act in the interests of the party that is in power at the Centre, rather than in the best interests of the state.

All these factors have contributed to the controversy surrounding the role of the Governor in India and have led to calls for reforms to clarify the Governor's powers and functions, and to ensure that Governors act in a neutral and impartial manner.

VIII. INSTANCES OF MISUSE OF DISCRETIONARY POWER

The much famous example of the discretionary power of the governor was the dismissal of the SR Bommai (Janata Dal) government in Karnataka in 1989. The **Governor of Karnataka** in this case refused to allow the chief minister who was democratically elected to prove his majority on the floor of the Assembly. The Governor stated in the report that Chief Minister S.R Bommai failed to call in majority for the majority of assembly and thus President rule should be imposed³⁴.

The **Governors of Andhra Pradesh** and **Goa** also exercised discretionary powers as they showed the partisan attitude by dismissing the governments led by NT Rama Rao and Wilfred D'Souza, respectively. The actions of Romesh Bhandari, the **Governor of Uttar Pradesh** were so blatantly partisan that he had to endure the Supreme Court's disgrace of being censored.

In 2018 the actions taken by **Governor of Karnataka** while forming a government is one of most recent examples. The Governor called a party to form the government and gave them some

³⁴ Gyan Prakash Kesharwani "S.R Bommai vs Union of India" Volume 1 April 2018, Pen Acclaims.

time to prove majority though it was not having a simple majority at the initial stage. But the Governor did not give the first preference to the other two parties with a post-poll alliance³⁵. This issue was solved with the intervention of the court.

In 1952, the **Governor of Madras** invited Congress to form government instead of UDF who was holding the majority seats.

In 2016, the **Arunachal Pradesh Governor** decided to advance assembly elections which lead to political crisis in the state and consequently paved the way to Presidential Rule

The main reason and the root cause for the discretion lies in the process of appointment of the governor itself. The Governor is not an elected officeholder, many have been retired military officers or civil servants or politicians. Besides everything, the Governor is appointed by the ruling party of the central government and therefore, all the actions and regulations of the Governor are often viewed as delegation by the Central government in the functioning of the State government. The role of the Governor becomes even more controversial when the ruling parties are different in power at the centre and the State.

IX. SUPREME COURT'S INTERVENTION BY LIMITING THE ROLE OF GOVERNOR

The intervention of the Supreme Court in the case of **State of Rajasthan v. Union of India**³⁶ was one of the most famous one where Indira Gandhi had lost the elections in 1977 and the Janta Party alliance came into power. The Janta Party issued a directive to the Chief Ministers of 9 states that were ruled by the congress, asking them to request their respective state Governors to dissolve the Legislative Assemblies in light of the national mandate against Congress. The constitutionality of this directive was challenged in the Supreme Court. The court was in a position to decide whether or not the 'subjective satisfaction' of the President under Article 356 was prone or immune to judicial review. Though the decision of the court was in negative, the court held that it had the authority to judicially review the decision of emergency if questions of constitutionality arise. Justice Bhagwati. P. N held the 'subjective satisfaction' should not be premised on irrelevant and mala fide factors.

The most significant intervention of the Supreme Court limiting the use of Article 356 came in the landmark case of **S.R. Bommai v. Union of India**³⁷. This case challenged the arbitrary dismissal of S.R. Bommai's government in Karnataka. The court noted that the intention of the

³⁵ Hung Assembly in Karnataka, all eyes on Governor, Times of India, <https://timesofindia.indiatimes.com/india/karnataka-assembly-elections-2018-what-role-will-the-governor-vajubhai-bala-play/articleshow/64175517.cms> (last visited on Jan 25 2023)

³⁶ State of Rajasthan v. Union of India (1977) 3 SCC 592

³⁷ S. R. Bommai v. Union of India (1994) 3 SCC 1

President on the basis of Governor's report was indeed subjective. However, the court had the authority to review the basis of which such satisfaction is reached. This ensured that the Governor's report was within the scope and ambit of judicial review. The Supreme Court on reviewing the report of Governor on the basis of which the President decided to declare emergency was mala fide and arbitrary in nature. Hence, the court, reinstated the Bommai's government. In this way, the court through the judgement in this case ensured that the Governor's report was rational and objective and further could not be misused to arbitrarily dismiss the democratically elected governments of the respective states.

Another significant intervention of the Apex Court of India was held in the case of **B.P. Singhal v. Union of India**³⁸. The central government upon coming into powers in the year of 2004 ordered the removal of Governors of 4 states, the decision was subsequently challenged in the court of law. The Supreme Court of India held that the President had the authority and power to remove the Governor without assigning any reason anytime he is pleased. However, it further held that this power should not be used in an arbitrary nature and only should be used when President has strong and compelling reasons to remove the Governor. The court while delivering its judgement further stated that mere disagreement between the newly elected Central Government and the Governor of any respective state will not be considered as a sufficient ground for removal. This case though was not fully securing the tenure of the Governor, it ensured that the Governor was removed arbitrarily out of any mala fide reason.

In the case of **Nabam Rebia v. Dy. Speaker, Arunachal Pradesh Legislative Assembly**³⁹, the Governor of Arunachal Pradesh summoned the Parliament House a month earlier than the date that was scheduled. Subsequently, the incumbent Chief Minister failed to prove his majority in the House. This failure of proving the majority gave a chance to the Governor to dissolve the Legislative Assembly and send a report to the President recommending for President's rule. The Supreme Court of India in this case held that the Governor can use his authority to summon the House at his discretion only when the Chief Minister has lost the majority and cannot do it either of other scenarios. The Court further held that the Governor's power under Article 174 of the Indian Constitution is subject to the aid and the advice of the Cabinet. The court in its judgement observed that Article 163(2) of the Indian Constitution does not confer absolute discretionary power upon the Governor. The Court held that Article 163, in no way gives the Governor, the right to turn his/her office into an all-pervading supreme constitutional body.

³⁸ B. P. Singhal v. Union of India (2010) 6 SCC 331

³⁹ Nabam Rebia v. Dy. Speaker, Arunachal Pradesh Legislative Assembly (2016) 8 SCC 1

In the case of **Rameshwar Prasad and ors vs Union of India and Anr**⁴⁰, the validity of the proclamation of Presidential Rule and the dissolution of the Assembly was challenged in the Court of law. The Supreme Court of India was called upon to pronounce its verdict on the validity of the issue which took place in Bihar in the year of 2005. The Supreme Court in its judgement held that the Governor had no authority to decide based on his subjective assessments.

Recommendations of **SARKARIA** and **PUNCHHI** commissions

Sarkaria Commission was appointed by the Government of India in 1983 to look into the power imbalances in Union-State relationships, and recommend changes to strengthen the federal structure of India⁴¹. The commission recommended for the continuance of the position of Governor, with some reforms. ‘‘In the case of appointment of the Governors, it suggested that he/she should be appointed in accord with effective consultations with the Chief Minister of the particular state. Furthermore, it was suggested that the Prime Minister consult the Vice President and the Speaker of the Lok Sabha before appointing a Governor. The commission also recommended that the Governor be a distinguished figure in some field and come from a state other than the one in which she is to be appointed. It was stated that the Governor should not have been involved in recent political activities and should not be a member of the Centre’s ruling party. In terms of tenure, the group proposed that the governor be given a five-year term, if at all practicable. The commission recommended that the removal of the Governor should be based on objective criteria like the violation of constitutional propriety, morality and dignity’’⁴².

The Punchii commission, led by former Chief Justice of India Shri M.M. Punchii, proposed some important revisions to the Governor’s powers⁴³. It accepted the Sarkaria Commission’s proposal that the Governor not be actively involved in politics prior to her appointment, that she not be from the ruling party, and that she come from outside the state.’’The commission recommended that the Governor should be appointed for a five-year term. To prevent the governor from being used as a ‘‘political football,’’ it was suggested that their removal from office be accomplished by impeachment (as with the president) by the state legislature.’’⁴⁴

⁴⁰ Rameshwar Prasad & ors vs Union of India Supreme Court of India 2006

⁴¹ Sarkaria Commission, Sarkaria Commission Report on Centre-State relations 1988, <http://interstatecouncil.nic.in/report-of-the-sarkaria-commission/>

⁴² Id

⁴³ Punchhi Commission, Report of the Commission on Centre-state relations 2010, <http://interstatecouncil.nic.in/punchhi-commission/>

⁴⁴ Id

“The commission’s notion of “localised emergency” was perhaps the most critical suggestion. Instead of declaring an emergency in the entire state, the commission recommended that Article 356 be called exclusively in the ‘districts or areas’ where the unrest originates, to guarantee that the elected government is not ousted repeatedly on the Governor’s recommendation. The commission also proposed that the Governor follow a prescribed sequence of precedence in the event of a hung assembly. This was done to ensure that the governor’s power to appoint the Chief Minister was not abused. It was also suggested that the Governor’s ability to withhold a bill for more than four months be limited.”⁴⁵

X. SUGGESTIONS AND RECOMMENDATIONS

There are several ways to prevent the discretionary power of the Governor and make the role of Governor more accountable, transparent, and neutral. Some of the key suggestions include:

Clearly define the powers and functions of the Governor: The Indian constitution must provide specific and clear guidelines for the powers and functions of the Governor in order to prevent the confusion and controversy surrounding their role. This will ensure that the Governors understand their duties and regulations, as well as on how they should interact with the state government and the council of ministers. It would also help the governors to act within the limits of their powers and do not overstep their bounds.

Make the appointment process more transparent: The process of appointing the Governors must be made more transparent, thereby reducing the chances of politically motivated appointments. For example, a committee of experts could be set up to screen candidates and make recommendations to the President.

Hold Governors accountable for their actions: If the Governor is not held responsible for his acts then he cannot be held liable even if he submits a false report to the President under Article 356. Therefore the government should consider imposing mechanisms in place to hold the Governors accountable for their acts. This will ensure that Governors act in an impartial and neutral manner without any bias. Mechanisms such as an ombudsman or an independent commission should be instituted for such purposes.

Encourage regular communication and cooperation between the Governor and the state government: There must be regular communications and meetings between the Governor and the state government in order to prevent conflicts and misunderstandings. This will help to ensure that the Governor is aware of the state's needs and priorities and that the state government

⁴⁵ id

is aware of the Governor's concerns. This will ensure that good cooperation and make the Governor to act in the best interests of the state and not on political pressure.

Avoid political appointments: There must be a provision to avoid political appointments of the Governors. This will reduce the accusations of politically motivated actions by the Governor, as the appointment process is conducted in an apolitical manner.

Proper review of powers and functions: It must be the duty of the government to review the powers and functions of the Governor regularly in order to ensure that they do not give rise to controversy and are in line with the current political and constitutional context of the country.

Limiting the discretion of Governor: The Governor's discretionary power to dismiss the state government should be limited and a provision for the judiciary review of the Governor's decision should be put in place. This will ensure that the Governor's discretion is not politically motivated or misused.

All these measures, if implemented properly, can help to prevent the discretionary power of the Governor, and make the role of Governor more accountable, transparent, and neutral. It is also important to note that these suggestions are not mutually exclusive and can be used in conjunction with each other to address the controversial role of the Governor in India. It's also important to note that these suggestions will not completely eliminate the controversies surrounding the role of governor, but they can help to minimize it.

XI. CONCLUSION

Despite harsh criticism of the role of Governor, there is continuing relevance and necessity of the post of Governor in a state. One cannot deny the crucial constitutional functions performed by the Governor in times of absence of elected government in the state. The Governor, as the head of the state, ensures the continuance of the state in such times. Governor also acts as a neutral mediator in intra-state disputes between different wings of the Government. A relook at the debates of the Constituent Assembly suggests that the framers of the Constitution forecasted Governor as the umbilical cord connecting the Union with the states.

The Governor was granted discretionary powers to ensure that the states are run in accordance with the constitutional principles. However, over the course of years, the appointment, tenure, and discretionary powers of Governor are subjected to a lot of criticism by the state government as well as other political parties. Nevertheless, the remedy does not lie in abolishing the post of Governor.

The Supreme Court of India, the Punchii Commissions⁴⁶ and Sarkaria commissions⁴⁷ have also advocated for the retention of the post. The best course of action should be to limit the arbitrary discretionary powers of Governor and ensuring the independence and impartiality of the office of Governor by providing for its apolitical appointment, fixed tenure, and objective criteria for removal. Implementing the suggested reforms would be a sound step in ensuring an independent and politically neutral office of the Governor as originally envisioned by the framers of the Indian Constitution.

In conclusion, the role of the Governor in the Indian political system has been a subject of controversy and debate for many years. While the Constitution of India lays out the powers and functions of the Governor, there have been instances where the Governor's actions have been perceived as overstepping their constitutional bounds and interfering in the political affairs of the state. The issues include the dismissal of democratically elected government, interference in the functioning of the state government, politically motivated use of discretionary powers, appointment of Chief Minister and ministers who are not supported by majority, playing a partisan role, and aligning with a particular political party or ideology. It is important for the Governors to act in a neutral and impartial manner, in line with the Constitution of India and in the best interests of the state and its people.

⁴⁶ *Supra* note 45

⁴⁷ *Supra* note 43