

COOPERATIVE FEDERALISM IN INDIA INSTITUTIONS OF POLITICAL MEDIATION: THE OFFICE OF THE GOVERNOR

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INSTITUTIONS OF POLITICAL MEDIATION: THE OFFICE OF THE GOVERNOR

ABSTRACT

Governors occupy a critical position in India's constitutional framework as a critical mechanism through which tensions between the central and state governments can be negotiated and managed. In fact, their powers have grown over time as other institutions intended to foster centre-state cooperation and coordination have atrophied. This chapter documents the *de jure powers and de facto* workings of the office of the Governor since Independence in 1947. It reveals the continuing contestation over Governors' independent decision-making, a matter which has been debated since the time of the Constituent Assembly. The unresolved matter of how Governors can independently exercise their discretion without acting, or being seeing to act, merely as instruments of the centre remains a vexed issue in the contemporary era.

On 19 July 1947, at 10:30 in the morning, an accomplice drove four young men (one of them just eighteen years old) in a jeep to a sprawling Victorian building called the Secretariat in downtown Yangon, then known as Rangoon. The U-shaped building made of red and yellow bricks was the epicentre of British rule in Burma. They were there to assassinate the man leading their country to independence. The young killers were not soldiers but wore jungle-green military uniforms and carried automatic guns. They got down in front of the west wing of the building, climbed the stairs, and reached the room where General Aung San, the founding father of Burma, was chairing a meeting of the Governor's Executive Council.

As Deputy Chairman of the Executive Council, General Aung San was the de facto Prime Minister and held the portfolios of defence and foreign affairs. He was thirty-two years old and had a wife and a two-year-old daughter Aung San Suu Kyi. Earlier that year, he had negotiated an agreement with the British government securing Burma's independence by the next year. The Deputy Chairman sat at the head of the council table, surrounded by other councillors. When the killers reached the meeting room, an accomplice outside signalled that the Executive Council's meeting was underway. The men forcibly entered the room; one crouched and the other three stood as they sprayed the room with bullets. The massacre was over in minutes. General Aung San died instantaneously, his body riddled with thirteen bullets. Seven other councillors also succumbed to death, five in the council room and two in the Rangoon General Hospital.¹

The news of this bloodbath in Rangoon would find resonance in the Constituent Assembly in Delhi, where members were crafting a Constitution that would forge a newly independent—and partitioned—India into a Union of States. One critical aspect was devising a structure that would provide flexibility of governance in States while ensuring that the centre would hold. This required designing institutions of political mediation between the constituent States and the central Union government. At stake was the very existence of a country that had unparalleled diversity on multiple axes of religion, language, caste, and ethnicity.

INDIA'S CONSTITUTIONAL STRUCTURE

India is a Union of States.² It follows a federal structure with the executive and legislature at both the Central and the State levels. The demarcation of jurisdiction over various subjects between the Centre and the States is provided in the Seventh Schedule of the Constitution. The federal structure by its very nature creates tension between the independent functioning of the constituent States and the need for unity and some level of uniformity across the Union.

There are three main constitutional mechanisms to negotiate this tension: the Rajya Sabha, the Inter-State Council, and the office of the Governor.

India's Parliament has two houses: Lok Sabha members are directly elected by adult citizens from geographically determined constituencies; Rajya Sabha members are elected by members of various State assemblies. Until 2003, a person could contest the Rajya Sabha elections from a State only if they were an elector for a parliamentary constituency in that State. This requirement was removed in 2003, which the Supreme Court affirmed in 2006.³ The removal of domicile requirement means a reduced connection with the State represented. After elections, the only link between any member and their State is that funds

¹ Maung, *A Trial in Burma – The Assassination of Aung San* (The Hague: Martinus Nijhoff, 1962).

² Article 1, Constitution of India

³ *Kuldeep Nayyar vs Union of India and Ors*, WP (C) 217 of 2004, Supreme Court, August 22, 2006.

from the Member of Parliament Local Development Scheme (MPLADS) must be spent in that State⁴. Indeed, several people have lost Lok Sabha elections before being elected to Rajya Sabha from a different State. Thus, the Rajya Sabha no longer effectively performs the role of political mediation between the Centre and States.

The Constitution also allows for the establishment of an Inter-State Council if at ‘any time it appears to the President that the public interests would be served’.⁵ This power was invoked thrice in the first twenty years of the republic: the Central Council of Health was established in 1952, the Central Council for Local Government and Urban Development in 1954, and four Regional Councils for Sales Tax and State Excise Duties in 1968. In 1969, the First Administrative Reforms Commission recommended a single standing body as an Inter-State Council that would make recommendations to better coordinate policy and action between the Centre and States. The Sarkaria Commission in 1988 endorsed this view, and the government set up the Inter-State Council in 1990.⁶

However, this Council does not meet regularly. It has met eleven times in all—once in 1990, nine times between 1996 and 2006, and the last time in 2016.⁷ In 1996, in its second meeting, the Council decided to create a standing committee for continuous consultation and processing of matters.⁸ However, this committee too doesn’t meet regularly. It has had only thirteen meetings so far—nine between 1997 and 2003 to discuss the Sarkaria Commission report, one in 2005 on disaster management, and three in 2017 and 2018 to discuss the Punchhi Commission report.⁹

The Governor’s office has become the only effective channel of political mediation between the Centre and the States. And as the next section will show, its ability to perform this role has come under tremendous strain.

THE GOVERNOR¹⁰

Both the Centre and the States follow the Westminster system, with the Indian Parliament and State legislatures forming the legislative branch. These bodies elect their councils of ministers, headed respectively by the Prime Minister and the Chief Minister. The head of the executive at the Centre is the President, who is elected by a collegium of members of Parliament and state assemblies. The analogous position at the state level is the Governor, who is not elected but is appointed by the President. A Governor is thus an appointee of the Union.

So, what is a Governor’s role? Analogous to the President, a Governor is the nominal head of the executive branch at the state level. In addition, Governors act as the eyes and ears of the Central government and sends periodic reports to the President.

4 Each Member of Parliament may recommend capital works up to Rs. 50 million per year within their constituency under the MP Local Area Development Scheme (MPLADS). Rajya Sabha members may recommend within the state they represent, and nominated members may identify works anywhere in India.

5 Article 263, Constitution of India.

6 “Formations,” Inter-State Council Secretariat, August 19, 2016, <http://interstatecouncil.nic.in/isc-formations/>.

7 “Meetings,” Inter-State Council Secretariat, September 15, 2022, <http://interstatecouncil.nic.in/isc-meetings/>.

8 “Composition,” Inter-State Council Secretariat, May 24, 2022, <http://interstatecouncil.nic.in/isc-composition-2/>.

9 “Meetings of the Standing Committee of ISC,” Inter-State Council Secretariat, June 24, 2016, <http://interstatecouncil.nic.in/isc-meetings-2/>.

10 This paper discusses the role of Governors appointed to states. It does not discuss the role of Lieutenant Governors (LGs), who are administrators appointed with executive power to Union Territories. Two Union Territories, Delhi and Puducherry, have legislative assemblies and a council of ministers, but the LGs have final executive authority.

Both the President and Governors are expected to act on the aid and advice of their Council of Ministers. There are some exceptional circumstances, such as the appointment of the Prime Minister or Chief Minister in a hung assembly where they have to exercise their discretion. While the actions of Presidents over the years have largely avoided controversy,¹¹ this is not the case with respect to Governors.

The source of the tension lies in two connected questions. Are Governors appointed by the Union able to maintain their independence from the political preference of the Central government? And what is the extent of their discretionary power in a parliamentary system?

These questions were raised in the Constituent Assembly, and have again been discussed by various commissions and court judgements. To explore further, it's first necessary to consider how the office has evolved over time.

The Constituent Assembly and the Office of the Governor

The British Parliament created the modern office of the Governor. The Government of India Act of 1935 provided some autonomy to a system of federal Provinces without risking the country's unity. It allowed the coexistence of both a popularly elected government and a Governor appointed by the colonial government.¹² Governors could act at their 'discretion' or per their 'individual judgement' in several matters. They were empowered to chair a meeting of the Council of Ministers and enact laws that were equal to those passed by the provincial legislature.¹³ Indian political leaders viewed these powers as negating the concept of provincial autonomy promised by the Act.

In the winter of 1936–7, when elections took place under this law, the Indian National Congress secured a majority in several Provinces. But the party refused to form a government in those Provinces until it was satisfied that the 'Governor will not use his special powers of interference or set aside the advice of Ministers in regard to their constitutional activities'.¹⁴ Viceroy Lord Linlithgow assured them that:

There is no vestige of foundation for the assertion which I have seen advanced that the Governor is entitled under the Act at his pleasure to intervene at random in the administration of the Province. Those special responsibilities are, as I have said, restricted in scope to the narrowest limits possible. Even so, limited as they are, a Governor will at all times be concerned to carry his ministers with him; while in other respects in the field of their ministerial responsibilities it is mandatory on a Governor to be guided by the advice of his ministers even though for whatever reason he may not himself be wholly satisfied that that advice is in the circumstances necessarily and decisively the right advice.¹⁵

This assurance paved the way for the Congress Party to form provincial governments.

The 1935 act was followed by a cabinet mission sent by the British Government to India. It proposed a weak Union government with control over only foreign affairs, defence, and communication. The mission also suggested that the residuary powers should remain with the provinces. The idea for more autonomy for the provinces continued in the early days of the Constituent Assembly tasked with the framing of the Indian Constitution.

¹¹ There have been a few instances such as that of President Zail Singh delaying assent to a Bill. For a detailed discussion on this topic, see James Manor, "The Presidency" in Devesh Kapur, Pratap Bhanu Mehta, and Milan Vaishnav, eds., *Rethinking Public Institutions in India* (New Delhi: Oxford University Press, 2017).

¹² Section 48, 50 Government of India Act 1935

¹³ Section 50(2), 88 Government of India Act 1935

¹⁴ Sir Reginald Coupland, *The Constitutional Problem in India* (Oxford: Oxford University Press, 1944).

¹⁵ Speeches and Statements by The Marquess of Linlithgow, Bureau of Public Information, Government of India, 1945

On 22 July 1947, the Constituent Assembly discussed the principles of a model provincial constitution. The Provincial Constitution Committee, chaired by Vallabhbhai Patel, had reported these to the assembly. While introducing the report, Patel said that his committee and the Union Constitution Committee (chaired by Jawaharlal Nehru) had jointly concluded 'that it would suit the conditions of this country better to adopt the parliamentary system of constitution'.¹⁶ The two committees agreed that the Governor be directly elected based on an adult franchise. Another recommendation was that in case there was a 'grave menace to the peace and tranquillity' of a state, the Governor, at their discretion, may report it to the President of India. The President would then take action under the emergency provisions of the Constitution. While discussing the Governor's emergency powers, several Constituent Assembly members referred to the recent events in Rangoon to argue that the Constitution should give more power to a popularly elected Governor.

Just three days earlier, on 19 July 1947, General Aung San had been assassinated. During the debate on the Governor's emergency powers, members argued that if a similar situation occurred in a State in India, the Governor should have enough powers to deal with the situation on the ground.¹⁷ Also weighing on their minds was the deteriorating law and order situation emanating from the country's partition. Other Constituent Assembly members were opposed to the idea of the Constitution giving more control to the Governor. They felt that more power to a Governor would encroach upon the domain of the Council of Ministers. They reasoned that in a parliamentary form of government, ministers accountable to the legislature should have the requisite authority to deal with emergent situations. The members arguing in favour of giving more power the Governor prevailed temporarily. The draft Constitution empowered the Governor to assume government control for two weeks in times of emergencies.¹⁸ But the final Constitution adopted by the Constituent Assembly did not contain this emergency provision.

The partition of the country changed the thinking of the Constituent Assembly. The Union Powers committee (chaired by Jawaharlal Nehru) stated in its second report, 'Now that partition is a settled fact, we are unanimously of the view that it would be injurious to the interests of the country to provide for a weak central authority which would be incapable of ensuring peace, of co-ordinating vital matters of common concern and of speaking effectively for the whole country in the international sphere'. The committee proposed that the 'soundest framework for our constitution is a federation with a strong centre'.¹⁹

During the final framing of the Constitution, the office of the Governor underwent several changes. One was related to the process of appointment. The draft Constitution had envisaged a popularly elected Governor as recommended by the Provincial Constitution Committee. The assembly changed it to a Governor nominated by the President. Members felt that an elected Governor would cause friction with a popularly elected Chief Minister and be incompatible with a parliamentary system. Another consideration was that a Governor needed to be an impartial individual who would be a 'harmonious element in the Constitution'. The reasoning was that a Governor nominated by the President would be better suited for the office than an individual who won election on a party ticket.

Assembly members like Alladi Krishnaswami Ayyar thought that the appointment of the Governor by the President 'would add a close link between the Centre and the Provinces and a clash between the two would be avoided, which would otherwise occasionally result'. Jawaharlal Nehru added that the election of

¹⁶ Constituent Assembly Debates, Volume IV, July 15, 1947.

¹⁷ Constituent Assembly Debates, Volume IV, July 23, 1947.

¹⁸ Article 188, Draft Constitution of India.

¹⁹ Constituent Assembly Debate, Volume V, August 20, 1947.

the Governor 'would, to some extent, encourage that separatist provincial tendency more than otherwise. There will be far fewer common links with the Centre'.²⁰

After the appointment question, the next issue to be tackled was the discretionary powers of the Governor. Since the Governor would be appointed and not elected, there was no need to clothe the office with discretionary powers. Article 143 of the draft Constitution (Article 163 of the current Constitution) specified, 'There shall be a Council of Ministers with the Chief Minister as the head to aid and advise the Governor in the exercise of his functions, *except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion*' (emphasis added).

Discussion about this article was animated. Assembly members like Hriday Nath Kunzru and Rohini Kumar Chaudhuri were apprehensive that Governors would misuse their discretion. They believed that such power to the Governor was against the principles of responsible government and wanted the offending portion deleted. Alladi Krishnaswami Ayyar responded that the structuring of the article would allow the Governor to exercise discretion if other provisions of the Constitution permitted it. One such provision was the discretion provided to the Governor in respect to matters related to the tribal areas in Assam.

BR Ambedkar added that 'article 143 will have to be read in conjunction with such other Articles which specifically reserve the power to the Governor. It is not a general clause giving the Governor power to disregard the advice of his ministers in any matter in which he finds he ought to disregard'.²¹ He would again speak about the discretionary powers of the Governor during a discussion on another constitutional provision, which dealt with the Chief Minister's duty to furnish the Governor with information. Ambedkar emphatically said, 'The Governor under the Constitution has no functions which he can discharge by himself; no functions at all'.²²

The Constitution finally adopted by the Constituent Assembly limited the office of the Governor to that of a constitutional head. On most issues, the Governor was to follow the advice of their Council of Ministers.

POWERS OF THE GOVERNOR

The Constitution has given wider powers to the Governor with respect to the States than to the President in matters of the Union. Article 74 provides for a Council of Ministers to aid and advise the President. The Forty-second Amendment added the requirement that the President 'shall...act in accordance with such advice'. The provision for the Governor is analogous with two important differences. The original Article 163 was not amended to require compliance with the advice of the cabinet. Also, the article gives an exception to the Governor: 'except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion'. The article also provides the Governor the discretion to decide whether a matter falls under his discretionary power.

Determining in which areas the Governor has discretionary powers has been a contentious issue. Some situations are obvious. If the Governor has to recommend imposition of President's Rule (dismissing the State government and placing the legislature under suspension), such a decision has to be within his discretion. The appointment of the Chief Minister also has to be within his discretion, as well as the decision to dissolve the assembly if no one can obtain the support of a majority of its members.

20 Constituent Assembly Debate, Volume VIII, May 31, 1949.

21 Constituent Assembly Debate, Volume VIII, June 1, 1949.

22 Constituent Assembly Debate, Volume VIII, June 2, 1949.

In addition to general executive power, the Governor has specific powers in some states. The Fifth Schedule requires the Governor to report to the President regarding administration of the Scheduled Areas, and the Central government can give directions to the State government on such administration. The Sixth Schedule empowers the Governor to suspend a district council and take over its powers under certain circumstances. The Constitution also provides special provision for the states of Nagaland,²³ Manipur,²⁴ Sikkim,²⁵ and Arunachal Pradesh.²⁶

The Governor also has a role in enacting new laws. After a bill has been passed by the Legislative Assembly (and the Legislative Council, if the state has one), it is sent to the Governor for his assent. The Governor has three choices: give assent, return it to the legislature for reconsideration, or forward it for the assent of the President.²⁷ The option of asking the legislature to reconsider a bill can be exercised only once; if it is passed again, the Governor can either give assent or reserve it for the consideration of the President.²⁸

Data for 2021 suggests that 75 percent of bills received assent of the Governor within a month of being passed by the legislature, and a further 18 percent within two months.²⁹

WORKINGS OF THE OFFICE OF THE GOVERNOR

There are three distinct phases in the way the office of the Governor has worked since independence. In the first seventeen years of the republic, Governors remained noncontroversial and ceremonial. State governments also kept them at a distance. During that period, the same party (Congress) held power in most States and the Centre. Amid shifts in the political landscape after 1967, however, Governors began to actively intervene in politics. The law-and-order issues in Punjab, Jammu, and Kashmir also focused national attention on Governors. In 1994, the Supreme Court reviewed the imposition of President's Rule in States as advised by Governors. The court's decision led to a temporary lull in interventions by Governors. But the rise of regional parties has led Governors to once again push the envelope of their constitutional mandate.

After Independence, State governments had limited engagement with Governors, whom they viewed as figureheads. VP Menon, the Indian Civil Service officer who had played a vital role in the integration of princely states in India, explained this lack of engagement. In 1951, he was appointed as acting Governor of Orissa for a brief period. In 1958, he recounted, 'But what the [State] Ministries have done is to reduce the position of the Governor to that of a figurehead. It is always dangerous in an administration to create functionaries without responsibility, but the Congress are apparently quite unable to forget their past conflicts with Governors during the days of the British. The Governor is still distrusted and is generally ignorant of day-to-day administrative problems'.³⁰ Part of the reason for this distrust was the profile of individuals nominated as Governors in independent India.

During the debate on Governors in the Constituent Assembly, Jawaharlal Nehru commented on who should be nominated to the office. He remarked, 'Politicians would probably like a more active domain for their activities but there may be an eminent educationist or persons eminent in other walks of life,

23 Article 371A of the Constitution of India.

24 Article 371C of the Constitution of India.

25 Article 371F of the Constitution of India.

26 Article 371H of the Constitution of India.

27 Article 200 of the Constitution of India.

28 Article 201 of the Constitution of India.

29 Raghavan Mridhula, N. Menon, and S. Surya, *Annual Review of State Laws 2021* (New Delhi: PRS Legislative Research, July 2022), <https://prsindia.org/policy/analytical-reports/annual-review-of-state-laws-2021>.

30 V.P. Menon, "Indian Administration Past and Present," Lecture delivered under the auspices of the Forum of Free Enterprise in Bombay, August 5, 1958.

who would naturally while cooperating fully with the government ... nevertheless represent before the public someone slightly above the party and thereby in fact, help that government more than if he was considered as part of the party machine'.³¹

Successive governments never fulfilled this expectation of having non-political personalities as Governors. For example, in the first decade after Independence, almost all Governors of Uttar Pradesh were senior political figures.³² The state's first Governor, Sarojini Naidu, was a former President of the Indian National Congress. The second, HP Modi, was more a businessman than a politician, although he had been a member of the Constituent Assembly. His successors KK Munshi, VV Giri, Ramakrishna Rao, and Bishwanath Das had active political careers before entering the Raj Bhavan. And this was true across the country. A study published in 2017 indicates that over half the Governors across the country between 1950 and 2017 came from a political background.³³ With consummate politicians as constitutional heads, ministers in states were reluctant to engage in case the Governors started interfering with their work.

In 1958, Prime Minister Nehru wrote to Governors chastising them for focusing on the ceremonial aspects of their office. In a letter, he advised Chief Ministers on utilizing the office of the Governor. Nehru wrote:

Any reference to the Constitution will show that the Governor is not merely a figurehead, although he is a constitutional head. He has to play an important part and his Ministers should keep in intimate touch with him and keep him informed of all important developments. There were in the past some cases where the Governor was kept apart and hardly informed of what was happening or informed after it had happened. This was not only wrong but it meant not utilising for public good a person of experience and position whose chief function was to help. In some other States the Governor has indeed played an important part in such consultations. Thus, it is desirable for Ministers to keep in fairly intimate touch with the Governors.³⁴

Until 1967, the same party, the Indian National Congress, ruled at the centre and in most states. Governors had little to do and many felt stifled in their constitutional office. Their role was limited to temporarily recommending President's Rule when a State government lost its majority and until the Governor could swear in another one. (The aberration during this period was in 1959, when the Governor of Kerala dismissed the EMS Namboodiripad-led leftist government on grounds of deteriorating law and order. It focussed attention on the constitutional propriety of the Governor's actions.) But after the Congress Party lost power in several states in the general elections of 1967, Governors faced public accusations of using their constitutional office for partisan political purposes in making and breaking governments. The involvement of Governors in State politics increased conflict between the States and the Centre.

The imposition of President's Rule is a proxy for both political instability and Governors playing an active political role in a State. Until 1967, across all States, Governors had recommended imposing President's Rule for an average of 195 days per year. In 1968, this number ballooned to 1,241 days (see Figure 1). Data from the 1980s and 1990s is skewed because States such as Punjab and Jammu and Kashmir were under extended spells of President's Rule due to rising militancy. The number of States under President's Rule in any given year indicates how widespread this instrument was used. It is instructive to see how the average number has fluctuated: from 1.1 States per year before to 1967, to 6 per year between 1967 and 1993, before declining to 1.5 per year from 1994 to 2015 (see Figure 2).

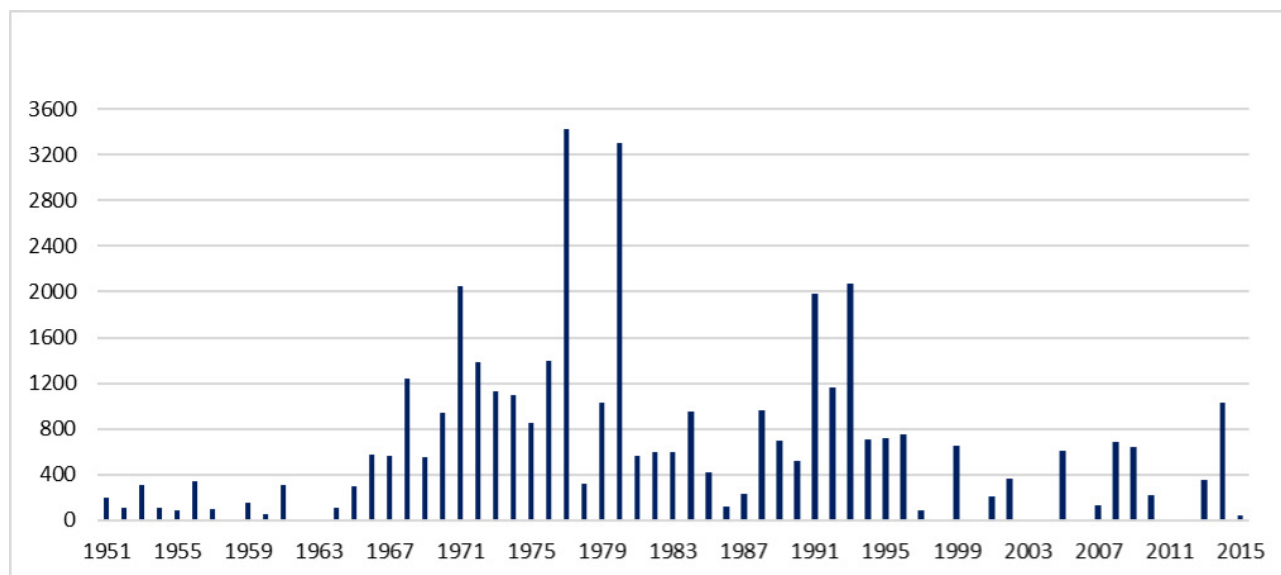
31 Constituent Assembly Debate Volume, VIII, May 31, 1949.

32 Data collated by Authors from the website of the Governor of Uttar Pradesh, <http://upgovernor.gov.in/en/page/former-governors>

33 Ashok Pankaj, "Governor in Indian Federalism-II: Hiatus between Constitutional Intents and Practices," *Indian Journal of Public Administration*, 63, no. 1 (2017): 13-40.

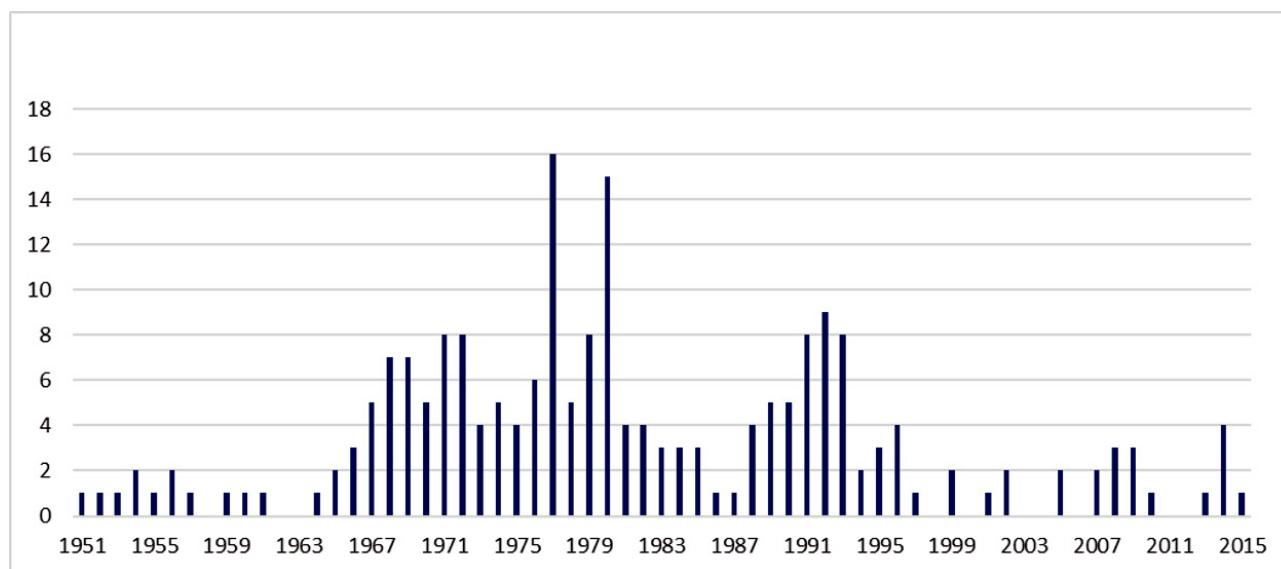
34 Jawaharlal Nehru, *Letters to Chief Ministers 1947-1964*, Volume 5 (New Delhi: Oxford University Press, 1988).

Figure 1: Number of days of President's Rule across the country in each year



Source: Presidents Rule in States and Union Territories, Lok Sabha Secretariat 2016

Figure 2: Number of states under President's Rule any time during the year



Source: Presidents Rule in States and Union Territories, Lok Sabha Secretariat 2016

The general election in 1977 also had a tremendous impact on Governors. For the first time in the country, the national government was led by a party other than the Congress. The Janata Party–led government removed Governors appointed by the previous Congress-led government and appointed new Governors. The new Governors recommended dismissal of the State government followed by dissolution of the State assembly and fresh elections. The roles reversed again in 1980 when Congress came back to power and dismissed the appointees of the Janata government. Both these processes—dissolution of the state governments and the dismissal of the Governors—were checked by the judiciary.

In 1994, a nine-judge bench of the Supreme Court effectively stopped the dismissal of State governments that were not politically aligned to the government at the Centre. The Court said that the proclamation to impose President's Rule would be subject to approval by both Houses of Parliament; until then, the assembly could be suspended but not dissolved. It also said that majority support for the Chief Minister should be tested only on the floor of the House, and not through the subjective judgment of the Governor. The Court also emphasized that the decision was subject to judicial review.³⁵

After this landmark ruling, the office of the Governor retreated into the background for more than a decade until the closely contested State elections in Jharkhand and Bihar in 2005. Both elections resulted in a hung assembly—and prompted their respective Governors to take action. In Bihar, the Governor dissolved the assembly even before the first session was held, earning the disapproval of the Supreme Court.³⁶ In Jharkhand, the Governor invited the second-largest party to form the government—even though the opposition coalition had claimed majority. The government lasted just a few days.

In 2010, a five-judge bench of the Supreme Court held that the President could remove a Governor at any time without assigning any reason. The judgment stated that the President could not do so in an “arbitrary, capricious or unreasonable manner. The power will have to be exercised in rare and exceptional circumstances for valid and compelling reasons.” The court would clarify that “the change in government at the Centre is not a ground for the removal of Governors holding office to make way for others favoured by the new government.” But it also stated that limited judicial review is available when Governors are removed.³⁷

In recent years, Governors have made many contentious decisions. In Maharashtra, the Governor did not nominate twelve members to the Legislative Council for over a year after the Council of Ministers recommended their nomination.³⁸ Kerala's Governor wrote to the Chief Minister urging him to sack the Finance Minister yet the Chief Minister refused to do so.³⁹ The Rajasthan Governor returned the recommendation of the government to summon the Legislative Assembly and then set three conditions to issue the summons.⁴⁰ The Governor of Tamil Nadu returned the National Entrance cum Eligibility Test (NEET) Bill to the assembly for reconsideration four months after it was passed; the assembly passed the NEET Bill again in a week, and the Governor took nearly three months to send it for the President's consideration.⁴¹ In West Bengal, the Governor criticized the Speaker and the Chief Minister,⁴² and also returned the recommendation to summon the assembly.⁴³ And the Governor of Arunachal Pradesh advanced the timing of an assembly session and gave directions on the agenda to be taken up; this was judged to be unconstitutional by the Supreme Court.⁴⁴

35 S.R. Bommai vs Union of India, 1994 AIR 1918, 1994 SCC (3) 1, March 11, 1994.

36 Rameshwar Prasad and Ors vs Union of India, January 24, 2006, WP (C) 257 of 2005.

37 B.P. Singhal vs Union of India & Anr, WP(C) 296 of 2004, Supreme Court, May 7, 2010.

38 Press Trust of India, “Unfortunate that Maharashtra CM, governor don't trust each other: Bombay HC,” March 9, 2022, <https://www.theweek.in/news/india/2022/03/09/unfortunate-that-maharashtra-cm-governor-dont-trust-each-other-bombay-hc.html>.

39 “Balagopal has ceased to enjoy my pleasure: Kerala Governor Arif Mohammed Khan now targets Finance Minister,” Indian Express, October 26, 2022, <https://indianexpress.com/article/cities/thiruvananthapuram/kerala-governor-arif-mohammed-khan-targets-finance-minister-kn-balagopal-8230652/>

40 “Rajasthan Governor summons House session, puts in 3 conditions,” Hindustan Times, July 27, 2020, <https://www.hindustantimes.com/india-news/rajasthan-governor-kalraj-mishra-calls-for-state-assembly-session-denies-he-was-delaying-it/story-YFL3zk5K7MWKbjyxvCLlM.html>.

41 “Tamil Nadu Governor refers anti-NEET bill to President for approval,” Mint, May 5, 2022, <https://www.livemint.com/news/india/tamil-nadu-governor-refers-anti-neet-bill-to-president-for-approval-see-details-11651724334625.html>.

42 “West Bengal governor slams State Assembly Speaker and Chief Minister,” *Economic Times*, January 25, 2022, <https://economictimes.indiatimes.com/news/politics-and-nation/west-bengal-governor-slams-state-assembly-speaker-and-chief-minister/articleshow/89120438.cms>.

43 Shiv Sahay Singh, “West Bengal Governor sends back Chief Minister Mamata Banerjee's recommendation to summon Assembly,” *Hindu*, February 19, 2022, <https://www.thehindu.com/news/national/other-states/wb-governor-returns-cms-recommendation-to-summon-state-assembly/article65065653.ece>.

44 Nabam Rebia and Bamang Felix vs Deputy Speaker and Ors, Civil Appeals Nos 6203-6204 of 2016, Supreme Court, July 13, 2016.

Attempts to Resolve Long-standing Issues

When the Congress Party's dominance waned across states in 1967, the lingering question of coordination between the Centre and States gained new prominence. Three committees between 1969 and 1971 recommended ways to harmonize relations between the Centre and States. The first was the Administrative Reforms Commission (ARC), set up by the government of India.⁴⁵ The government of Tamil Nadu also set up the Rajamannar Committee to 'examine the entire question regarding the relationship that should subsist between the Centre and the States in a federal setup, with reference to the provisions of the Constitution of India'.⁴⁶ And finally, the President of India set up a committee of Governors to 'study and formulate norms and conventions governing the role of Governors under the Constitution'.⁴⁷

The main recommendations of these committees concerned the appointment, tenure, and discretionary powers of the Governor. The ARC recommended that only someone with long experience in public life should be appointed—in consultation with the Chief Minister—for a single term. The Rajamannar Committee offered similar recommendations, while also saying that the Governor's tenure should be secure and that they may be removed only for proven misbehaviour or incapacity.

The ARC wanted the Inter-State Council to formulate guidelines that would codify discretionary powers and be issued in the name of the President. The Rajamannar Committee suggested that an instrument of instructions be issued to direct the manner of government formation. The Committee of Governors opposed codifying discretionary power, claiming it would be impossible to envisage all possible situations. It suggested that a wing be formed in the President's secretariat that would collate the reasons given by Governors for their decisions and confidentially share those reasons with all Governors, as to help them with similar decisions in a uniform manner.

In the decade after these various committees submitted their recommendations, things worsened dramatically. Article 356 (or President's Rule) was frequently invoked to dismiss elected governments, and Governors were dismissed en masse as the Central government changed parties. The Sarkaria Commission was constituted in 1983 to 'examine and review the working of the existing arrangements between the Union and States in regard to powers, functions and responsibilities in all spheres and recommend such changes or other measures as may be appropriate'. Its final report includes a chapter on the role of the Governor.⁴⁸

It made similar comments on appointment: an eminent person, not someone recently involved in politics, and from a different state. It reiterated the principle of consulting the Chief Minister, and of security of tenure. It said that a Governor should not be eligible for any office of profit under government except a second term as Governor or election as Vice President or President. It suggested the process for choosing a Chief Minister in a hung assembly, and said that the assembly should be dissolved in the absence of a viable Chief Minister only after consulting all party leaders. It also said that if the Governor finds that it is constitutionally improper to accept the advice of the cabinet, every effort should be taken to persuade them—discretionary power should be used only as a last resort. It clarified that in situations where the Governor is ex-officio Chancellor of a university, and in matters related to Articles 371, 371A, 371C, 371F and 371H (special powers with respect to some states), the Governor has full discretion and has no obligation to abide by the cabinet decision.

45 Government of India, *Administrative Reforms Commission Report on Centre-State Relationships* (New Delhi: Government of India, 1969).

46 Government of Tamil Nadu, *Report of the Centre-State Relations Inquiry Committee* (Chennai: Government of Tamil Nadu, 1971) (also known as the Rajamannar Committee, after its Chairperson).

47 President's Secretariat, Government of India, *Report of the Committee of Governors* (New Delhi: Government of India, 1971).

48 Government of India, *Report of the Sarkaria Commission on Centre-State Relations* (New Delhi: Government of India, 1988).

Two decades later, two more Commissions were set up. The National Commission to Review the Working of the Constitution (NCRCW), headed by Justice Venkatachaliah, was formed in the year 2000. It presented its report in 2002.⁴⁹ The Punchhi Commission on Centre-State relations was set up in 2007, and presented its report in 2010.

Both Commissions concurred with the Sarkaria Commission on the criteria for selecting a person as a Governor. The Punchhi Commission recommended security of tenure and removal only through impeachment as in the case of the President.⁵⁰

The Punchhi Commission also laid out a detailed process for inviting a person to become Chief Minister after an election. Both commissions reiterated the principle that the confidence test should be only on the floor of the House. The NCRCW also stated that Article 356 should be used as a last resort. Both commissions suggested a time-frame of six months for the Governor to give assent to Bills or reserve for consideration of the President.

After all this, we are still mostly where we started. Six high-level commissions and five decades later, no major recommendations have been implemented.

CONCLUSION

The Governor holds a sensitive position as the interlocutor between the Centre and the State. To be effective, they must be trusted by both parties. The vexed question of a Governor's independent decision-making has been debated for years by the Constituent Assembly and several high-level commissions.

Some things are clear. In a parliamentary system, the office of the Governor cannot be an elected position as that would undermine the office of the Chief Minister. Also, in general, the Governor must respect the popular mandate given to the Chief Minister and act on the aid and advice of the Council of Ministers. The Executive is held accountable by the people through the Council of Ministers—which, in turn, is held to account by the Legislative Assembly. Actions of the Governor have to be in consonance with this principle.

There are some obvious exceptions, analogous to the President. The appointment of the Chief Minister, ascertaining that the Chief Minister enjoys the confidence of a majority of the Legislative Assembly, and dissolution of the Assembly in the absence of such a Chief Minister have to be performed at the Governor's discretion.

Unlike the President, the Governor has some other areas where discretionary powers may be necessary. If situations arise that could threaten the unity of the nation, the Governor may have to take action regardless of the advice of the Chief Minister. This could include recommendation to the Centre to take over administration of the state by applying Article 356; a Chief Minister is unlikely to advise such an action. However, this is an exceptional power and should be used in exceptional circumstances.

How, then, does one ensure that the Governor is using such discretion in an independent manner and not at the behest of the Centre? Several committees have made clear recommendation regarding the appointment of the Governor (consult the Chief Minister) and ensuring that there are no incentives for

⁴⁹ Government of India, *Report of the National Commission to Review the Working of the Constitution* (New Delhi: Government of India, 2002).

⁵⁰ Government of India, *Report of the Punchhi Commission on Centre State Relations* (New Delhi: Government of India, 2010).

favouring the Centre (no second term, no other office after the term, removal only for misconduct). There have been discussions regarding an instrument of instructions issued by the President, however this contradicts the idea that the Governor acts independent of the Central government.

As the Constituent Assembly debates in the immediate aftermath of General Aung San's assassination show, the balance between having sufficient discretion to ensure integrity of the nation and respecting the popularly elected government is a delicate one. In this, there are no easy answers.

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