

Governance and the Governor

The article, "Do we need the office of the Governor?" (Editorial page, May 24, 2018), raises important questions about a constitutional post which has come under fire. While the developments in Karnataka over government formation after the Assembly election results are the peg for this, calls to do away with this often maligned position are hardly new.

Under the constitutional scheme, the Governor's mandate is substantial. From being tasked with overseeing government formation, to reporting on the breakdown of constitutional machinery in a State, to maintaining the chain of command between the Centre and the State, he can also reserve his assent to Bills passed by the State Legislature and promulgate ordinances if the need arises. Further, under Article 355, the Governor, being the Central authority in a State, acts as an overseer in this regard.

There are numerous examples of the Governor's position being abused, usually at the behest of the ruling party at the Centre. The root lies in the process of appointment itself. The post has been reduced to becoming a retirement package for politicians for being politically faithful to the government of the day. Consequently, a candidate wedded to a political ideology could find it difficult to adjust to the requirements of a constitutionally mandated neutral seat. This could result in bias, as appears to have happened in Karnataka.

A possible solution would be not to nominate career politicians and choose "eminent persons" from other walks of life. Both the Sarkaria and M.M. Punchhi Commissions seem to hint at this. But this could also lead to the creation of sycophants within the intelligentsia, an equally worrisome prospect. On the other hand, there are instances of politicians who have risen above partisan politics, and performed their role with dignity and without fear or favour. In this one can think of former President Pranab Mukherjee, former Lok Sabha Speaker Somnath Chatterjee, and former West Bengal Governor Gopal Krishna Gandhi.

One has to consider the verdict of the Supreme Court in *B.P. Singhal v. Union of India*, on interpreting Article 156 of the Constitution and the arbitrary removal of Governors before the expiration of their tenure. This judgment is crucial since a fixed tenure for Governors could go quite far in encouraging neutrality and fairness in the discharge of their duties, unmindful of the dispensation at the Centre.

Undoubtedly, the most crucial issue relates to the exercise of gubernatorial discretion. The Governor has the task of inviting the leader of the largest party/alliance, post-election, to form the government; overseeing the dismissal of the government in case of a breakdown of the Constitution in the State; and, through his report, recommending the imposition of President's rule. There are examples of the last two having been frequently misused to dismiss "belligerent" State governments, but this has been checked substantially by the Supreme Court through *S.R. Bommai v. Union of India*. Following the Sarkaria Commission's recommendations, the Court underlined that the breakdown of constitutional machinery implied a virtual impossibility, and not mere difficulty, in carrying out governance in a State. It said that while the subjective satisfaction of the President regarding such a breakdown was beyond judicial scrutiny, the material on which such satisfaction was based could certainly be analysed by the judiciary, including the Governor's report. It reserved the power to declare this report mala fide and restore the dismissed government. The same idea can be extended in case of the Governor's discretion in inviting a party to form the government.

Since the Bommai verdict allows the Supreme Court to investigate claims of mala fide in the Governor's report, a similar extension to cover mala fide in the invitation process could be a

potential solution.

In India, the balance in power is tilted towards the Union. The importance of the Governor's position arises not from the exceptional circumstances that necessitate the use of his discretion, but as a crucial link within this federal structure in maintaining effective communication between the Centre and a State. As a figurehead who ensures the continuance of governance in the State, even in times of constitutional crises, his role is often that of a neutral arbiter in disputes settled informally within the various strata of government, and as the conscience keeper of the community.

In the current political climate — examples being Goa, Manipur and Karnataka — it may seem natural to suggest that the post of the Governor has outlived its utility. These occurrences are but instances in a long chain of events stretching back decades, all of which point to the need to ensure proper checks and balances to streamline the functioning of this office. However, misuse of a position of power should not serve as a justification for removing the office altogether, unless such a position has totally lost its relevance. Rather, these debates on limitations on the power of constitutional functionaries should be allowed unimpeded to ensure the organic development of our polity.

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