

## **Recommendations of Sarkaria Commission Regarding the Office of Governor & Article-356 in India**

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**Abstract:** There is a great deal of controversy in all federal states, over the years, which has centered on the question of inter-governmental relations on how federal system operates and how it should operate. But it is futile to blame either the Centre or any of the states for deteriorating relations or growing differences. At least academic discussions should avoid blaming the governments for it systems and institutions are amenable to misuse, they have to be corrected. Keeping the fact in view, the Congress Govt. headed by Smt. Indira Gandhi appointed a Commission headed by former Chief Justice Sh. Ranjeet Singh Sarkaria in 1983, who reported in 1987. The commission gave some important recommendation to make the federal relations much healthier and peaceful. It recommends that the office of the governor and use of Article 356 should remain uncontroversial. The center government should follow some constitutional measures regarding the use of Article 356 and the Office of the Governor. The present research paper throws a light on the recommendation of Sarkaria Commission in this regard.

**Keywords:** Centre-State Relations, Governor, Article 356, Centre Government.

**Introduction:** Centre-State relation denotes a certain balance between the two concerned, a balance that is bound to be changing. This balance which was very much in favour of the Centre in Nehru era shifted in favour of the states in late 1960s and 1970s to some extent and the present serious debates indicate the awareness to the lengthening of the arms of the Centre due to many factors and the resistance to this presented by the States in different forms and in varying degrees. Some of the unitary trends in the working of India's federal policy, which led to the major source of confrontations, are as follow: Firstly, the Congress dominance in the national and state politics. Secondly, Indira Gandhi's 'personalized politics' further resulted in

centralization of decision-making at various levels of governance. Thirdly, the centralized nature of institutions like Planning Commission, All India Civil Services, the arbitrary dismissal of State governments, and imposition of President's Rule (misuse of Article 356). Fourthly, the partisan role of the Governor in acting as an agent of the Central government during hung Parliament. Finally, constitutional provisions relating to the division of the subjects (which privileged the Centre) and sharing of taxation and revenue distribution between the Centre and the States.

Meanwhile in 1983, Smt. Indira Gandhi appointed the Sarkaria Commission who took note of these violations and partisan working and also of their continuing active role in politics in some cases. It found that 60 percent of the Governors had taken active part in politics, many of them immediately prior to their appointment. Appointment of eminent persons shows a steep fall from 1980 onwards. While a recommendation was made for a suitable amendment to ensure that a Governor is selected following effective consultation with the Chief Minister of the State, for the rest it advised about development of healthy conventions. It stressed that the point needs to be re-emphasised is that the Governor should act in his discretion in *rare and exceptional cases, where he is* compelled by the dictate of good conscience and duty to uphold the Constitution. It would be neither feasible nor desirable to formulate a comprehensive set of guidelines for excursive for the discretionary powers of the Governor.

Again while examining 'Emergency' provisions in relation to Article 356. i.e. imposition of President's rule in a State, it note that in 13 cases where such a rule was imposed the Ministry enjoyed a majority support in the Legislative Assembly. In 15 other cases other claimants who were in a position to form a ministry were not given a chance to form an alternative government. Only in 26 cases out of total of 74, it appeared that President's rule was inevitable. A recommendation of far reaching consequence is made in that the Legislative Assembly should not be dissolved until the proclamation issued under Article 356 is placed before and duly considered by Parliament. And further, that it should be made obligatory by suitable constitutional amendment, that every such proclamation should contain the material facts and grounds on which Article 356 (i) is invoked so that the remedy of judicial review on the grounds of malafides becomes a little more meaningful. Such details should form an

integral part of the proclamation and it should be, in the Commission's words a "speaking document". The Governor's report and recommendation of such action be given wide publicity in the media.

The Sarkaria Commission (1984) has offered suggestions as regards the appointment and function of the governor in order to make the institution acceptable to all irrespective of party. According to the commission, only an eminent person and not the politician is eligible for such an appointment. Before accepting someone as the leader of the majority party, the Commission insists, the governor should test the claim of majority on the floor of the assembly. This will provide each claimant with an opportunity to justify his claim and it will also save the governor from embarrassment and error of judgment. Although the commission has suggested steps to counter the opposition parties 'criticism against the governor, not a single sentence is there regarding the withdrawal of discretionary powers. So, whatever improvement is visible on the surface is entirely deceptive as the governor still enjoys the constitutional guarantee to protect the constitution in the states by applying his/her mind. With the arrival of various regional parties on the scene this provision ensuring discretionary power to the governors will continue to be utilised by the party individuals at the centre to destroy the opposition parties ruling different states.

The Commission's job was to recommend" such changes or measures may be appropriate" keeping in view "the social and economic developments that have taken place over the years" and "have due regard to the scheme and framework of the Constitution which the founding fathers have so sedulously designed to protect the independence and ensure the unity and integrity of the country which is of paramount importance for promoting the welfare of the people". The task has legal constitutional implications to improve the arrangements while the problems experience in working the 'arrangement' has political overtones, Union-State relations' are being improved by legal 'arrangements'. The Commission has made a large number of recommendations which need to be considered as a package. The more important of these recommendations relate to:

**Role of Governor:** Only eminent persons, who are not active politicians, should be appointed as

governors, the selection should be made in consultation with the Vice President of India, Speaker of the Lok Sabha and Chief Minister of the state concerned, the Governor should test the majority support for a Chief Minister only on the floor of the Legislative Assembly. Under Article 154 (1) of the Constitution, the executive powers of the state are vested in the Governor. The Constitution provides for the appointment of the Governor of each state by the President on the advice of the Union Council of Ministers. The role of Governor is vital in the smooth conduct of the relations between the Centre and the States. In actual practice, however, the Governor is appointed by the Central Government to act as its representative at the state capital. In normal times, the Governor is the nominal head of the state. However, in exceptional conditions, he can exercise his discretionary authority and even recommend to the President the dismissal of the government. The power to declare a state of Emergency is the most effective tool in the hands of the Governor. During the President's rule, the Governor is vested with executive authority to carry out the functions of the state government.

The Central Government's control over states through Governors became one of the controversial issues in Centre-state relations. One of the major criticisms against the Governors was that 'they were acting as Centre's agents and were accused of their partisan role'. They repeatedly acted against the State governments and the legislature, setting aside all democratic norms. The recommendation to impose the President's rule by the Governors, particularly in a politically conflicting context without exploring all possibilities of having an alternative government raised questions on the integrity of the Governor as representative of the Centre.

The interventionist character of the Governor's power to return bills passed by the State government on matters other than Money Bills became another major area of controversy. Governor, under Article 200 of the Constitution, can reserve certain bills passed by State Legislatures for consideration of the President, Under Article 201, the President may give his assent to such bills at his will, without a time-limit, or exercise his veto power kept pending. The Union government misused the provision extensively. This has undermined the legislative autonomy of the states. From 1977 to 1985, some 1,130 state bills were reserved for the President's consideration.

This has also made the role of governor critical and controversial. The Centre appointed Governor played an unfortunate role, bringing the status and integrity of the governorship into considerable disrepute. The Governor often tended to use his/her discretionary powers and interfered in matters relating to administration and legislation which go beyond the provisions of the Constitution. With the institution of Governor increasingly embroiled in controversy, the State governments demanded for a greater say in the appointments and the dismissal of the Governors, apart from seriously reviewing the nature and extent of their discretionary powers. In order to prevent the misuse of the discretionary powers of the Governor, many recommendations were made by different committees and commissions. Some of them are as follows:

The Sarkaria commission Report made following recommendations with regard to the appointment of the Governor:

- He should be an eminent person.
- He should be a person from outside the state.
- Must not have participated in active politics at least for sometime before his appointment.
- He should be a detached person and not too activity connected with the local politics of the state.
- He should be appointed in consultation with the Chief Minister of the state, Vice-President of India and the Speaker of the Lok Sabha.
- His tenure of office must be guaranteed and should not be disturbed, except for extremely compelling reasons.
- 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.
- At the end of his tenure, reasonable post-retirement benefits should be provided.
- In case, none of the political parties secure absolute majority to form the government or

even if the ruling party loses its mandate on the floor of the house, they should be given a chance to prove the same.

- If the President's rule shall be imposed, it should be publicized in the media.

**Article – 356:** Invoking of Article 356 has been the subject of considerable controversy and debate. Article 356 was first invoked in July 1959 against the Communist government, led by EMS Namboodiripad in Kerala. Since then, the Article has been abused several times to dismiss politically inconvenient governments. From 1950 till date, various political parties ruling at the Centre enforced/misused Article 356 on more than 120 occasions. In many cases, State governments, which enjoyed majority in the Assembly, were dismissed. And in other cases, State governments were dismissed without being given an opportunity to prove their strength on the floor of the House.

Article 356 was misused to dismiss the States government of an opposition party or to manipulate political advantages to favour a practical party or individual. The Centre used this provision to serve its own political interests. It has rarely taken into account the Article 355 before making proclamation under Article 356. Political misuse of this provision has been extensive, particularly by the Congress ruled Centre. From 1967 onwards, when the Non-Congress State governments were voted to power at the state level, the Congress invoked Article 356 to dismiss the duly elected State governments.

By the mid-1980s, the emergence of the BJP and a number of regional political parties not only challenged the one-party dominance of Congress party but also questioned the arbitrary use of Article 356 and the partisan role of the Governor. In response to the demand by several opposition leaders, Indira Gandhi, on 24 March, 1983 appointed a commission headed by Justice R.S. Sarkaria to go into the Centre-State relationship.

The Sarkaria Commission made 12 recommendations relating to Article 356. The Commission recommended that the article should be resorted to "Very sparingly, in extreme cases as a measure of last resort, when all available alternatives fail to prevent or rectify a breakdown of the constitutional machinery in the state." The Commission had said that the alternatives to Articles 356 might be dispensed with only in cases of extreme urgency where

failure on the part of the Union to take immediate action under Article 356 would lead to disastrous consequences. The alternatives suggested by the Sarkaria Commission include issue of a warning to the errant state in specific terms that it is not carrying on the government of the state in accordance with the Constitution. It had also suggested that before taking action under Article 356, any explanation received from the state should be taken into account. Prior to invoking Article 356, the commission recommended that it should be a 'speaking document' containing a precise and clear statement of all materials facts and grounds.

**A Critical Appraisal:** Nevertheless, we cannot ignore the fact that the Sarkaria Commission favours the retention of a strong centre. It firmly rejects the demand for the curtailment of the powers of the centre in the interest of national unity and integrity. "We absolutely need to have a strong centre and there is no doubt about it. Without that everything will wither away." The commission does not favour fundamental changes in the provisions of the constitution and asserts that the constitution has worked reasonably well and withstood the stresses and strains of the heterogeneous society in the throes of change. However, along with it, the report accepts the importance of preventing undue centralism. The successive Central governments in India failed to implement the recommendations of the Sarkaria Commission. Out of 247 recommendations made by Sarkaria Commission, only two recommendations had been accepted so far, the one is that the Inter-State Council has been created by the Act of the Parliament. But its meetings are not held regularly. Secondly powers had been devalued to the local government institutions by enacting 73<sup>rd</sup> and 74<sup>th</sup> Constitutional Amendment Acts. To conclude we can point out that Article 356 is still a controversial issue of Centre-State Relation and Office of the Governor is alleged by the various Political parties as to play a role which is partial in many ways. However, the Punchhi Commission was also appointed in 2007 and it gave its recommendation likewise the Sarkaria Commission. In spite of this there seems no change on these controversial issues of Indian federalism.

#### **References:**

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



2. Bidyut Chakrabarty, (ed.), *Centre-State Relations in India*, (Allahabad: Segment Book Distributors, 1990).
3. S.C. Arora, (ed.), *Current Issues and Trends in Centre-State Relations*, (New Delhi: Mittal publications, 1991),
4. S.S. Tiwana, "Centre-State Relations in India : A Plea For State Autonomy", *Punjab Journal of Politics*, Vol. XXVI, No. 1, 2002.
5. S.A. Palekar, *Political System In India*, (Jaipur : ABD Publishers, 2006).
6. Subash Shukla, *Issues in Indian Polity*, (New Delhi: Anamika Publishers, 2008).
7. P.D Sharma and B.M. Sharma, *Indian Administration : Retrospect and Prospect*, (Jaipur : Rawat Publication, 2009).
8. Rajesh K. Jha, *Fundamentals of Indian Political System*, (New Delhi : Pearson Edu., 2012).
9. B.L. Fadia, *Indian Government and Politics*, (Agra : Shahitya Bhawan, 2016).