

Sarkaria Commission & Federal Relations in India: An Overview

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ABSTRACT:

The way in which Governors had used their discretionary powers to serve the interests of the Centre in appointment of a Chief Minister as by Governor Tapase in Haryana and Governor Jagmohan in appointing G.M. Shah as the Chief Minister by dismissing the Government of N.T. Rama Rao by Governor Ram Lal in 1984 or in reservation of Bills passed by the State legislature for the consideration of the President, had come in for a very sharp criticism. In some cases particular individuals were appointed as Governors in disregard of the opposition by the Chief Minister. The Srinagar conclave' document therefore charged that Governor had frequently acted in violation of the spirit of the constitution and asked for an end to their discretionary power. The Commission 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. The present research paper highlights various suggestions made by Sarkaria Commission in the perspective of federal relations in India.

KEYWORDS: Federal Relations, Sarkaria Commission, Role of Governor, Article – 356, Inter-State Council, NDC.

INTRODUCTION: The radical suggestion deleting several articles goes a long way to change the basic nature and structure of the Indian Constitution. But the demand for restructuring Centre-state relations continued unabated by Non-Congress states like Andhra Pradesh, Karnataka, West Bengal, Kerala, Assam, Tripura, Tamil Nadu and Jammu & Kashmir. This forced Government of India

to set up a commission under the chairmanship of Justice R.S. Sarkaria to go into the question and recommend appropriate changes within the constitutional framework in August 1983. The Commission took four years to complete its deliberations and submitted its report on October 27, 1987. The Commission made a total of 247 recommendations of which 24 were rejected, 10 were not considered wholly relevant and 36 accepted with modifications. One hundred and nineteen recommendations are reported to have won the government's full acceptance. The present research paper highlights some main recommendations of Sarkaria Commission.

RECOMMENDATIONS OF THE COMMISSION: 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 of 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 consolation 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 miscued 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.

INTER-GOVERNMENTAL

COUNCIL: An inter Governmental Council should be set up under Article 263 comprising the Prime Minister, all Chief Ministers and Union Cabinet Ministers to deal with all major problems, other than economic and developmental, between Union, state and local governments, the Council should be assisted by a small Standing Committee of Ministers and an Advisory Committee of experts; Zonal councils should first consider zonal interstate problems before they are taken up by

the Inter-Governmental Council.

ECONOMIC AND DEVELOPMENT

COUNCIL: The present National Development Council should be reconstituted under Article 263 as Economic and Development Council with a small Standing Committee and a nexus with the Planning Commission to deal with all economic and development problems' State Finance and Planning Boards should be strengthened and function as the link between the National Planning Commission and state governments on the one hand and provide financial assistance and development advice to the districts on the other; District level planning should be given high priority and a part of Entry 5 of State List may be transferred to concurrent list to ensure regular elections to and functioning of Zila Parish ads and municipalities by an all India statute.

FINANCE: Corporation tax should be made shareable with states, certain other levies, loan procedures and foreign exchange municipal bonds should be tax exempt; Centrally sponsored schemes should be strictly limited as per recommendations of Ramamurti Committee.

LANGUAGE POLICY: Overzealous official or state language policy can be a very counter-productive and divisive force; Articles 347, 350 and 351 should be implemented purposefully and in their true spirit, three language formula should be enforced scrupulously and uniformly and tendency in some states to have virtual two or four language formulae, at the cost minorities, should be firmly curbed' Rashtrabhasha should be simplified. Incumbents of constitutional offices and other sentinels of the polity should be selected from among persons of admitted competence and integrity and provided with reasonable security of tenure.

STATE BILLS: Decision re-assent should be given within four months. I fully agree with the conclusions and recommendations of the Report of the Commission. If these are carefully listed, considered and accepted by our legislatures and implemented by the executive, it should help bring about significant improvement in relations between Union, state and local governments. But it is also my considered opinion that this itself will not be enough. Because of its anxiety not to appear to go beyond its terms of reference and create undue controversy, the Commission has

avoided dealing with importance issues like our system of government, political parties and system of election, resulting in excessive politics of confrontation. These also have counterproductive effects on Union state relations and need careful consideration.

STRONG CENTRE SHOULD

CONTINUE: The Sarkaria Commission favours the retention of a strong centre. It family 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.

REJECTION OF DEMAND FOR THE TRANSFER OF SOME SUBJECTS OF STATE LIST TO THE CONCURRENT LIST :

The commission rejected, demand for the transfer of certain state subjects to the concurrent List. On

the other hand, it held that the centre should consult the states on concurrent subject. The commission also did not favour restrictions on the powers of the center to deploy armed forces in the states, even though it favoured consultations with the concerned state governments before these forces are actually deployed in the states.

SUPPORT FOR COOPERATIVE

FEDERALISM: The Report favours greater cooperation between centre and states. It wants an end of confrontation which has been a feature of Centre-State relations in India for the last few years. This can be achieved through frequent consultations between the centre and the states and by avoiding unilateral decisions by the Centre. It also wants greater cooperation between the centre and the states in the matter of formulation of plans and their implementation. The commission is quite critical of the manner in which vital democratic traditions and conventions have been dealt with by the governments of late and expediency has sometimes been given precedence over wisdom and short-term advantages over long-term benefits.

RECOMMENDATIONS

REGARDING THE ISSUE OF

APPOINTMENT OF CHIEF

MINISTER: The Report suggests that the leader of the majority party in the state legislature should be appointed as Chief Minister. If no single party enjoys a clear-cut majority in the State Legislature, the person who is likely to command a majority in the Assembly be appointed Chief Minister by the Governor. In such a case it should be obligatory for the Chief Minister to seek majority vote in the Assembly within 30 days.

RECOMMENDATION REGARDING SUMMONING OF THE SESSIONS OF THE STATE LEGISLATURE:

Generally the Governor should convene the sessions of State Assembly only on the recommendations of the State Minister, but under certain circumstances he can make use of his discretion in the matter of summoning the session of the State Legislature. Article 263 of the Constitution says about the setting up of Inter-State council to look into matters of Centre-State dispute and recommend or suggest steps for their resolution and the President is enjoined upon to implement the recommendations of this body but the Commission has recommended that this Article should be amended in a way that Inter-Governmental council (IGC) should

be set up as a permanent body. Apart from looking into Centre-State disputes it should also study matters relating to socio-economic development of the country and planning. This body should include all the Chief Ministers, representatives of Union territories, all Union Cabinet Ministers and also other central and State Ministers as becomes necessary. Since it would be a very large body, a standing committee of the IGC should be set-up under the chairmanship of P.M. and six chief ministers, each belonging to one zone of the country. This standing committee would meet 'in camera' at least once in tow months and then the Centre-State coordination would be more effective.

NATIONAL DEVELOPMENT

COUNCIL: The NDC should be given a formal or constitutional status and its duties and functions should be clearly defined. Its name should be changed to become 'National Economic and Development Commission.

SOME OTHER RECOMMENDATIONS:

- No commission of Inquiry should be set up against a Union or State Minister to investigation charges of corruption of abuse of power

- unless such a resolution is first passed by the Parliament by simple majority.
- Regarding the administration of Union Territories, the Commission has recommended that there should be a special standing committee for each such unit under the charge of the Union Home Minister so that the problems could be looked into expeditiously.
 - The vacancies of High Court Judges should be filled within a time schedule. The Chief Justice of India should also consult a High Court Judge before advising the President for his transfer from one High Court to another.
 - The Centre should have full power to decide a matter relating to deployment of its armed forces or paramilitary forces in any state for the maintenance of law and order and in such matters the State should give full cooperation.
 - The Centre should make laws to implement the scheme of democratic decentralization in the country, Regular elections should be held so that local bodies may act effectively in the country.
- Terms of Reference of the Finance Commission should be determined by the Centre in consultation with the States, and the existing division of responsibilities between the Finance Commission should continue.
 - A Zonal Council should be constituted to provide a forum, for the first level discussion on most, if not all, issues of regional and inter-state relevance.
 - Sarkaria Commission recommends that residuary powers of legislation in regard to taxation matters should remain with Parliament, while the residuary field, other than that of taxation, should be placed in the Concurrent List. The Constitution may be suitably amended to give effect to this recommendation.
- CONCLUSION:** Thus, the Commission has wisely suggested measures relating to the office of the Governor and proper use of Article 356 and no consideration was given to the sensitive, rather dangerous implications of the Anandpur Sahib Resolution, because granting much autonomy to the states at the cost of the

powers of the Centre would not have been in the national interest. 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, 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 73rd and 74th Constitutional Amendment Acts. It is alleged that the recommendations of Sarkaria Commission are palliatives and not creative. On matters of vital importance to the healthy growth of Indian democracy, instead of examining actual misuse of constitutional provisions by the Union Government and suggesting safeguards to prevent them in future, the Sarkaria Commission has played to the tune of the Union Government thereby accepting its centralising powers as inevitable. But the commission failed to perceive certain inherent defects in the original allocation of powers, between the Union and the States. Recently BJP Govt. has stated that it will act on the suggestions of Sarkaria Commission and

Punchi Commission and would establish harmonious federal relations with the states.

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