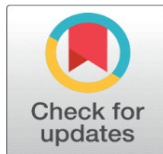


CONSTITUTIONAL CONUNDRUMS: THE RELATIONSHIP BETWEEN GOVERNORS AND ELECTED GOVERNMENTS

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ABSTRACT

India is a federal republic and envisages a parliamentary form of the government. The makers of the Constitution of India opted for the federal polity with a strong centre. The federal system not only ensures the efficient governance of the country but reconciles national unity with regional autonomy. The term federation has nowhere been used in the Constitution. Article 1 of the Constitution described India as the Union of States. It is so because Indian federation is not the result of agreement among states like American federation and States have no right to secede from the federation. Federation is Union because it is indestructible. The framers of the Indian Constitution defined Indian federation as an “Indestructible Union of Destructible States”. Indian Constitution has a dual structure of the government with the Union Government at the centre and State government at the periphery. It lays down the framework for the governance of the country including the position of the governor. The Governor holds an important position in a constitutional democracy. He acts as a counsellor or arbitrator rather than an active politician. He is responsible for the smooth functioning of the administration in the State. But with the time, several issues arose regarding the role of Governor in the state politics. Where there is a multi-party system, there has always been a tussle between the Governor and the elected Governments. As seen in the recent past, the Governor has been acting as an agent of the Centre rather than in the interest of State. This has created a major power struggle between the Government and State governments. It is a high time to review the office of the Governor. The paper discusses the need and importance of the office of the Governor in India. The paper also focuses on the constitutional and judicial framework regarding the position of the governor and the reforms which must be brought in the office of the governor to strengthen the constitutional democracy. Also, the researcher has discussed the various recent controversies revolving around the office of the governor in various states.

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1. INTRODUCTION

India has adopted the federal system of the government in which the powers are divided between the Centre and the State. The Constitution of India has adopted the parliamentary system of the government both at the centre and at the state levels. At the state, the Governor holds an important position. He serves a pivotal link between the Centre and the State. The Governor plays a vital role in upholding constitutional principles, ensuring the smooth functioning of the State Government, maintaining coordination between the central and state governments, and safeguarding the interests

of the Union. The Governor's powers and responsibilities contribute to the overall governance and stability of the Indian political system.

The Governor is the Constitutional head of the State. He ensures the effective and the smooth functioning of the State. The Governor acts as the guardian of the State's Constitution. They ensure that the State Government functions within the framework of the Indian Constitution and does not violate its provisions. The Governor represents the Central Government at the state level. He ensures the coordination between the Union and the State Government. He also plays the role of arbitrator or mediator whenever the conflict between the Central and the State government arises.

In the constituent assembly, one of the major issues before the makers of the Constitution was regarding the office of the Governor. The committee of the Constituent Assembly recommended that the Governor should be chosen through the direct elections, but this idea was not appreciated by the other members of the committee on the ground that the direct elections of the Governor were not compatible in the Parliamentary system of the Government. On the other hand, one of the arguments was that Governor should be appointed by the President rather than the direct elections. The Constitutional makers were of the view that Governors should be appointed during the pleasure of the President. Governor can only exercise the powers on the aid and advice of the Council of Ministers headed by the Chief Minister except in cases where discretion is to be used by the Governor or in the emergency situations. He is responsible for the smooth functioning of the administration in the State. But with the time, several issues arose regarding the role of Governor in the state politics. Where there is a multi-party system, there has always been a tussle between the Governor and the elected Governments. As seen in the recent past, the Governor has been acting as an agent of the Centre rather than in the interest of State. This has created a major power struggle between the Government and State governments. This tension between Governors and elected governments, particularly in parliamentary democracies has given rise to constitutional conundrums that challenge the principles of democracy, federalism, and governance.

2. CONSTITUTIONAL FRAMEWORK OF GOVERNORS AND ELECTED GOVERNMENTS

The Constitution of India provides for the federal structure of the government in which the powers are divided between the Union and the States to ensure the effective administration. The Governor is the constitutional head of the State. Part VI of the Constitution gives the detailed framework for the office of the Governor in India. Article 153-162 of the Constitution provides for the position of the Governor. The position of the Governor is similar to the President of India. He exercises same duties as that of President. The President is considered as the nominal head of the Centre whereas the Governor is the formal head of the State.

Article 153 talks about the appointment of the Governor. It provides that the "Governor shall be appointed for each State." The 7th Amendment Act 1956 added a proviso to Article 153 which states that the same person may be appointed as the Governor for 2 or more states. Article 154 of the Constitution of India provides for the executive power of the State. It states that the "The executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with the provisions of the Constitution." The procedure for the appointment of the Governor has been mentioned under Article 155 of Indian Constitution. It provides that "The Governor of a State shall be appointed by the President by warrant under his hand and seal."

Article 156 of the Constitution of India provides that "The Governor shall hold office during the pleasure of the President." In addition to this, Article 156 mentions that the "Governor shall hold office for a fixed term that is 5 years from the date on which he enters upon the office. This term of 5 years is subject to the pleasure of the President. He shall continue to hold office until his successor enters upon the office notwithstanding the expiry of 5 year term". The Governor may submit his resignation in writing at any time to the President of India. Moreover, the Constitution of India does not mention any grounds for the removal of the Governor by the President.

The Governor's role is not just ceremonial but also has significant powers and functions. He can exercise the executive, legislative as well as the judicial power for the smooth administration of the State. The Governor is the head of the executive in the State. He appoints the chief minister and other ministers on the advice of the chief minister. He is also the appointing authority of the State's Advocate General and other officials. The Constitution of India has given the wide legislative powers to the Governor. No Bill becomes an Act unless and until the Governor gives his assent. He can summon and prorogue the State Legislature. He has also the power to dissolve the State Legislative Assembly. Besides the executive and legislative power, he is also vested with the financial and judicial powers. He is responsible for

presenting the state's budget to the Legislature. He has to ensure that the state's finances are in order. The Governor is also the appointing authority of the judges of the High Courts and the Subordinate Courts.

Article 163 of the Constitution provides that "There shall be a Council of Ministers with the Chief Minister at the head to aid and advice the Governor in the exercise of his functions, except the discretion granted by the Constitution". It gave the wide discretionary powers to the Governor for the effective exercise of his functions. The Governor can seek information from the chief minister about state administrative and legislative matters. The Governor can reserve a Bill for President's consideration. Also, The Governor can recommend the President to impose President's rule on failure of constitutional machinery. The Governor can appoint the chief minister when no party has a clear-cut majority. He can dismiss the council of ministers when he cannot prove the confidence of the state legislative assembly. The Governor can dissolve the state legislative assembly when the council of ministers lose their majority. If any question arises whether a matter is within the Governor's discretion or not, the Governor's decision shall be final.

The discretionary powers of the Governor have assumed a controversial role since past few years. In the case of *S.R Bommai v. Union of India*, the Supreme Court has observed that Governor has limited powers to dismiss the state government. It is not an absolute power. He can dismiss a state government only when the State Government has lost the majority or is acting against the Constitution. It can be challenged in a court of law. The court also held that the Governor's decision to dismiss a government can be reviewed by the court on the grounds of malafide, perversity, or unconstitutionality.

In *Rameshwar Prasad v. Union of India*, the Apex Court observed that the Governor's decision to dissolve the state legislative assembly can be subject to judicial review. In the case of *Nabam Rabia v. Deputy Speaker*, the Supreme Court held that the Governor cannot interfere in the proceedings of the State Legislative Assembly. He cannot direct the assembly's speaker to conduct a floor test. Article 163 of the Constitution does not give the Governor a general discretionary power to act against or without the advice of his Council of Ministers. The Court remarked that the discretionary power of the Governor does not extend to summon the House, determine its legislative competence or address the legislative assembly without consulting the Council of Ministers under Article 174 of the Constitution.

3. ROLE OF ELECTED GOVERNMENTS

In India, elected governments play a crucial role in the governance and functioning of the country. India is a democratic republic, and the system of government is based on the principles of representative democracy, where citizens elect their leaders through the direct elections. The elected governments at both the national and state levels are responsible for various functions, including lawmaking, policy implementation, and ensuring the welfare of the people. From making laws and formulating policies to ensuring social justice and managing economic affairs, they play a central role in shaping the country's governance. At the national level, the Union government handles the affairs of the entire country, while at the state level; state governments focus on regional needs and development. Together, these elected bodies work to ensure the welfare of the people, uphold constitutional principles, and manage India's diverse and dynamic society.

Governments at the Centre and the State are responsible for making the laws enumerated in the three lists mentioned in Schedule VII of the Constitution. Elected governments at both the national and state levels are responsible for formulating policies that affect the social, economic, political, and cultural aspects of the country or state. These policies address issues like education, healthcare, agriculture, infrastructure, urbanization, poverty alleviation, and more.

The Elected Governments at both the levels exercise the executive powers. They execute and enforce the laws passed by the Legislature of the State. Both the Union and State governments have a Council of Ministers headed by the Prime Minister or Chief Minister (at the state to oversee various portfolios, such as finance, health, education, home affairs, etc., and are responsible for running the administration of the government. Moreover, the elected governments are responsible for ensuring the protection of fundamental rights guaranteed by the Constitution of India. They are also tasked with ensuring that justice is accessible to all citizens.

Elected governments play an essential role in ensuring efficient governance and smooth administration. This includes managing government bureaucracy, ensuring the delivery of essential services, and upholding transparency and accountability in the administration. In addition to this, the governments are entrusted with the task of the enacting policies and programs aimed at reducing inequality and promoting social justice. India's federal system requires constant

coordination between the central government and state governments. This ensures that policies and laws passed at the national level are implemented effectively at the state level and vice versa.

4. CONSTITUTIONAL STRAINS AND POINTS OF CONFLICT

Where there is a multi-party system, there is a tussle between the Government and the elected Governors. It has been observed that in some situations, the Governor appears to be powerful than the government. However, this is not a new thing. In the past, too, there have been differences or disputes between state governments and the Governor, but the extent to which this has progressed in the present times is harmful for the peaceful centre-State relations. The conflict between Governors and the elected government has increased significantly in non-BJP-ruled states. Also, the potential for conflict arises when the Governor's discretionary powers are perceived to override the decision-making autonomy of the elected government.

The Governor is appointed by the President on the advice of the Union Government. It raised the concerns about the independence and impartiality of the Governors. There have been many instances where the Governors are appointed from the ruling party or they have been removed for political reasons. This undermines the dignity and stability of the office of the governor. The powers of the Governor are subject to the discretion of the Governor which can cause friction with the elected State Governments.

Although the governor is supposed to be the President's analogue at the state government, the reality is that they have been, and continue to be, the agents of the Union government, sent to keep a check on popularly elected state governments. The governor can be removed from office at the pleasure of the Union government. The Governor is secure in the knowledge that as long as they do as they are told by the Union government, they will continue to hold their positions. As the head of state, they are not even answerable to the courts for their actions while in office.

The conflicts which arise between the elected governments and the Governor regarding the administration have created a constitutional crisis among the State. The discretionary powers of the Governor have been misused in many instances. The Constitution is silent about the various discretionary powers which may be entrusted to the Governor.

4.1. APPOINTMENT OF THE CHIEF MINISTER

One of the major issues which arise between the Governor and the elected governments is regarding the appointment of the Chief Minister. Article 164 of the Constitution provides that the Chief Minister of the State shall be appointed by the Governor and shall hold office during the pleasure of the Governor. Usually, the leader of the majority party is appointed as the Chief Minister. In situations where no party has a clear majority, the Governor has discretion in inviting a leader to form the government, potentially leading to accusations of political manipulation.

In Tamil Nadu, the tensions began right after the appointment of Mr. R. N. Ravi as the Governor. Before joining politics, Mr. Ravi was an IPS officer and had also served in the CBI. The coalition allies of M. K. Stalin-led Government viewed this with suspicion, questioning the appointment of a retired central government bureaucrat as the Governor of an opposition-ruled state. In addition to this, the appointment of the retired Supreme Court Justice, S. Abdul Nazeer, as the Governor of Andhra Pradesh, also caused an uproar, with the opposition arguing that the appointment of retired judges poses a threat to the independence of the judiciary since it may cause judges to give biased judgements in the hopes of post-retirement rewards. After a change in the ruling dispensation in 2014, the Central Government dismissed nine governors appointed by the previous Government, and the newly appointed governors naturally obliged their political masters.

In 2019, the governor of Maharashtra, Bhagat Singh Koshyari, invited the Bharatiya Janata Party (BJP) to form a government in the state despite the Shiv Sena, Congress, and National Congress Party (NCP) forming a post-poll alliance. The Governor administered the oath of Chief Minister to Devendra Fadnis of BJP. The BJP had won fewer seats than the Shiv Sena in the state elections, but the governor gave the BJP a chance to prove their majority in the assembly. This decision was challenged in the Supreme Court, and the court ordered a floor test to be held to determine the majority party in the assembly. Eventually, the Shiv Sena, the Nationalist Congress Party (NCP), and the Indian National Congress (INC) formed a government in the state. The Supreme Court in *Shiv Sena v. Union of India* observed that "Governor can never be allowed to ask or a trust vote when there is absolutely nothing to shake the majority of the party in government on the floor of the legislature."

The Governor is neither directly elected by the people nor indirectly elected like the President. The Central Government recommends individuals whom the President then appoints as Governors. The Supreme Court opined in *Rameshwar Prasad v. Union of India* that the "Appointment and removal of Governors cannot be arbitrary or politically motivated. If the appointment of the Governor is partial and only officers or sympathizers of the Central Government are appointed as Governors, it will cause a disturbance of power between the Centre and the States". This is a political post retained after much deliberation and debate by the Constituent Assembly and its use as a pawn by the Centre significantly harms the federal structure as well as the effective governance of the country.

4.2. DISSOLUTION OF THE LEGISLATIVE ASSEMBLY

The Governor has the discretionary power to dissolve the Legislative Assembly of the State. Article 174(2) of the Constitution of India confers on the Governor the power to dissolve the Legislative Assembly. This power has to be exercised on the aid and advice of the Council of Ministers. There have been many instances where the office of the Governor has been a subject of controversy regarding the dissolution of the legislative assembly of the State. The Governor has often dismissed the State Legislature even if the elected government has a majority, leading to potential political instability. The action of the Governor is often influenced by the political considerations rather than the constitutional norms.

One of such instance occurred in 1959 in Kerala. The Communist Party was in power in the state and the government was implementing progressive land reforms. The Governor dismissed the State Government by invoking Article 356 of the Constitution citing the failure of the constitutional machinery in the state. The dismissal was highly controversial and was viewed as a politically motivated by the Central Government led by the Indian National Congress to curb the rise of Communist movement in the state. The Kerala High Court held that the Governor's action was unconstitutional as it was the arbitrary dismissal by the Governor acting on the aid and advice of the Union Government.

Similar incident happened in 1980 in Tamil Nadu. The government in Tamil Nadu was dismissed by the Governor on the charges that the state government was not functioning according to norms laid down in the Constitution. The President Rule was imposed in the state under Article 356. The dismissal was seen as an internal political crisis and growing tension between the Central Government and State Government. The action of the Governor was politically motivated and was an arbitrary use of the power under Article 356. The Supreme Court held that the action of the Governor is unconstitutional and the President Rule in the State under Article 356 could not be imposed unless there was clear failure of the constitutional machinery in the state.

On the similar lines, the government of Uttar Pradesh was dismissed by the Governor in 1970. The Governor dissolved the Uttar Pradesh legislative Assembly on the ground that there has been a breakdown of law and order and assembly was failing to function according the provisions of the Constitution. This move was also motivated by the political factors. Furthermore, the Maharashtra Government led by Shiv Sena was dismissed by the Governor by invoking the President Rule in 1990. The Governor advised the President to dismiss the Legislative Assembly of the State on the ground that the State Government was unable to command a majority in the House. The action was controversial because the dismissal appeared to be motivated by political pressure from the central government to destabilize the Shiv Sena-led government.

4.3. WITHHOLDING THE ASSENT OF THE BILLS

Article 200 of the Constitution of India provides the assent to the bills by the Governor. It states that "When a bill has been passed by both the houses of the state legislature, it shall be presented to the Governor. He shall declare either that he assents to the Bill or withholds the assent or reserves the bill for the consideration of the President. The Governor may as soon as possible return the bill for the reconsideration of the houses of the state legislature. If the houses pass the bill again with or without amendments, the Governor is bound to give his assent to the Bill". No time limit has been provided under the Constitution of India within which the Governor has to either give assent or return the Bill to the House.

The Governor also has the power to reserve the bill for the consideration by the President in case he does not give or withhold the assent to the bills. Reservation of the bill by the Governor for the consideration by the President is mandatory where the Governor is of the opinion that such bill endangers the position of the State High Court Article 200 of the Constitution does not expressly lays down the circumstances in which the Governor has to reserve the bill for the

consideration by the President. In such circumstances, the Governor can use his discretion to reserve the Bill. Governor may be justified in reserving a Bill for consideration in the following matters-

- 1) When The Bill Suffers from Patent Unconstitutionality
- 2) When The Bills Derogate from The Constitutional Framework and Endanger The Sovereignty, Unity And Integrity Of The Nation.
- 3) When A State Bill Is in Direct Conflict with The Central Law
- 4) When The Interests of The Another State Are Adversely Affected

In Kerala, on October 23, 2023, the constitutional crisis emerged when the Governor asked the Vice-chancellors of the 9 Universities to resign. The Chief Minister argued that Governor had no such power and the action was against the principle of democracy and Constitution. The Governor previously had also interfered in the working of the government. He continued to make the political statements against the elected government of Kerala. The Governor took the action on the basis of the Supreme Court judgement setting aside the appointment of the Vice-Chancellor of a technology university. The Chief Minister argued that there is no provision in the law which permits the Chancellor of the University to dismiss the Vice- Chancellor. While removing a Vice – Chancellor of the University, a definite procedure must be followed. In addition to this, 11 ordinances have lapsed because the Governor did not give assent to the Bills. On many occasions, he was seen as the opponent of the elected government.

In Tamil Nadu the Governor R.N. Ravi did not act upon the T.N. Admission to Undergraduate Medical Degree Courses Bill, adopted by the Assembly in September 2021. The Governor is required to either send it to the President of India for approval or return it for reconsideration by the Assembly, but the indefinite delay in taking a decision is undermining the legislature. In 2022, the State Legislative Assembly passed a bill to exempt the state from NEET, the medical entrance examination. The Governor did not sign it and sent it back to the Legislative Assembly. Moreover in January 2023, The Governor refused to read some parts of the speech prepared by the State Legislative Assembly and incorporated some of his words into it. The tension between the Governor and elected Government in the state began to arise when the Governor walked out of the House after the Legislative Assembly passed a resolution to use only the original speech prepared by the State Government.

In the state of Punjab, there is a tussle ongoing between the Governor and Chief Minister. The clashes between Punjab Governor Banwarilal Purohit and Chief Minister Mann are not just limited to the issue of when to convene Assembly sessions, but also on matters like the manner in which state's affairs are being run, appointments to various institutions, including universities. Recently in the State of Punjab v. Principal Secretary to the Governor of Punjab and Another, the Supreme Court gave a new interpretation to Article 200 of Constitution of India which relates to the options before a Governor when a Bill after being passed by the State Legislature is presented to him for his assent. The Court held that "the Governor may send the Bill back to the Assembly with a request for re-consideration of the Bill as whole or certain provisions." It further states that if the Assembly after such re-consideration passes the Bill with or without the amendments, the Governor shall not withhold assent from the Bill. The Court observed that the Governors cannot delay the decision on the Bills. Through this judgment, the Court has protected the rights of the State Legislature in the law-making and the entire constitutional system from the depredations of the unelected Governors.

5. JUDICIAL FRAMEWORK

The Courts have played an important role in maintaining the balance between the powers of the Governor and the elected government. Several landmark cases have clarified the boundaries of gubernatorial discretion and the limits of interference in state matters. In S.R. Bommai v. Union of India the Supreme Court ruled that the Governor's report to the President, recommending the imposition of President's Rule, must be based on concrete evidence of a breakdown of constitutional machinery, rather than political motivations.

In Raj Bhavan vs. Elected Government the Court has consistently upheld the principle that Governors should act on the advice of the Chief Minister and the Council of Ministers, except in exceptional situations as prescribed by the Constitution. However, the courts have also emphasized the need for political neutrality and impartiality in the role of the Governor.

In Rameshwar Prasad v. Union of India, the Apex Court observed that the governor's decision to dissolve the state legislative assembly can be subject to judicial review. In the recent case of Nabam Rebia v. Deputy Speaker, the Supreme Court held that the governor cannot interfere in the proceedings of the State Legislative Assembly. The governor cannot

direct the assembly's speaker to conduct a floor test. Article 163 of the Constitution does not give the Governor a general discretionary power to act against or without the advice of his Council of Ministers. The Court remarked that the discretionary power of the Governor does not extend to summon the House, determine its legislative competence or address the legislative assembly without consulting the Council of Ministers under Article 174 of the Constitution.

It has been observed that after the independence, the office of the governor has become more of a political position. Rather than acting as an impartial head of the state, the governors operate as agents for the Central Government while assuming the office. Perhaps no other institution in the political system of India has become such an object of heated political debate as has the office of the Governor. In recent times, the Governor is being criticized for being a puppet of the central government and acting as an agent of the Centre rather than being the constitutional head of state. The Governors have not only come for criticism for the exercise of their discretionary and Constitutional powers, but even with regard to their appointment, conduct and relations with the elected political executives, they have become a subject of public attack and controversy.

6. CHALLENGES AND REFORMS ASSOCIATED WITH GOVERNOR'S OFFICE

The Governor is appointed by the President on the advice of the Union Government. It raised the concerns about the independence and impartiality of the Governors. There have been many instances where the Governors are appointed from the ruling party or they have been removed for political reasons. This undermines the dignity and stability of the office of the governor. The powers of the Governor are subject to the discretion of the Governor which can cause friction with the elected State Governments.

Although the governor is supposed to be the President's analogue at the state government, the reality is that they have been, and continue to be, the agents of the Union government sent to keep a check on popularly elected state governments. The governor can be removed from office at the pleasure of the Union government. The Governor is secure in the knowledge that as long as they do as they are told by the Union government, they will continue to hold their positions. As heads of state, they are not even answerable to the courts for their actions while in office.

The conflicts which arise between the elected governments and the Governor regarding the administration have created a constitutional crisis among the State. The discretionary powers of the Governor have been misused in many instances. The Constitution is silent about the various discretionary powers which may be entrusted to the Governor. The constitutional mandate to act on advice of the council of ministers is not clearly distinguished from the statutory authority as chancellor, resulting in many conflicts between the governor and the state government.

Over the time, various committees have been established to overcome the challenges associated with the office of the Governor. The Sarkaria Commission which was established in 1988 suggested that the Governor should be appointed by the President after consultation with the Chief Minister of the concerned State. The Governor should act as a bridge between the Centre and the State and not as an agent of the Centre. The Governor must exercise his discretionary powers judiciously.

The National Commission to review the Working of Constitution also submitted its report in 2002 on role of the Governor in a State. It mentioned that the appointment of the Governors should be entrusted to a committee comprising of Prime Minister, Home Minister, Speaker of Lok Sabha and the Chief Minister of the concerned State. The Governors should not be removed at the will of Union Cabinet. They should be allowed to complete their 5 year term unless they are removed on the ground of proven misbehaviour or incapacity. Moreover, the Governors should not interfere in the day to day administration of the State.

7. CONCLUSION AND SUGGESTIONS

The Constitutional makers from its inception stage gave much attention to the office. Several provisions were discussed in the length by the Constituent Assembly to make the office of the Governor as impartial as possible. The Constitution of India recognizes the Governor as an executive head of the State and warp and woof of the State Legislature. But in the present times, the role of the Governor has changed to a much extent. He is considered as an agent of the government who functions according to the whims and caprices of the Central Government. Governor is given the wide discretionary powers, but they are not left to the Governor's own choice. They are regulated by the Central Government. There has been the misuse of the powers of the Governor in the recent times. The constant tussle has been

seen between the Governor and the State Legislature regarding the powers of the Governor. It is the high time to review the powers of the governor. Therefore, it is crucial for the governor to act within the boundaries of the Constitution

Till the time specific guidelines are not laid in the Constitution for the exercise of the discretionary powers by the Governors, the Court can continue to keep a check on the conduct of the Governors. It will help to prevent the arbitrary actions by the Governor. The appointment and the removal process of the Governor should be reformed so that Governors cannot use their political position in a State. The Governors should be made an elected representative of the State rather than a nominee of the Union Government. This process will enhance the accountability of the office and reduces the interference by the Centre.