

Roles of the Governor's Office under the Constitution of India - A Critical Analysis

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Abstract

This Paper deals with the appointment and functioning of the institution of the Governor as well as the irregularities and problems surrounding the powers vested in the office.

The Governor of a state plays a dual role one as the constitutional head of the state and the other as the agent or representative of the center. There are several examples of the Governor's position being misused, usually at the request of the ruling party at the Centre. The process of appointment has generally been the cause behind it. To enable the governor to successfully discharge his functions under the constitution, there should be some set of guidelines approved by the state governments, the central government, the parliament, and the state legislatures should be evolved.

The Guidelines should lay down certain norms and principles which should guide the exercise of the governor's discretion and his powers which he is entitled to use and exercise on his individual judgment. The procedure for the appointment of governors should be clearly laid down and conditions of appointment must also be laid down and must assure a fixed tenure for the governor so that the governor is not under the constant threat of removal by the central government. It is necessary to invest the office of the Governor with the requisite independence of action and to rid them of the bane of instructions from the Central Government.

Keywords: Governor, Discretionary Powers, Responsible Government, Constitution of India, Federalism, Center-State Relations.

Introduction

The Indian Constitution is the supreme law of the land, having paramount importance, it is a mixed blend of many other working Constitutions of the world, it establishes constitutionalism, rule of Law, and democracy it is federal with a unitary bias. The post of governor is of immense importance in our political system. It is considered as one of the indispensable parts of "checks and balances" that our democracy is proud of.

The origin of the office of the Governor in India, as we know it today, can be traced to the beginning of the "East India Company" to India. The word "Governor" is historically also associated with the Portuguese "Afonso de Albuquerque" who held the position of Governor and Captain-General in India in the year 1509.

Powers and functions bestowed upon the governors and lieutenant-governors of the states and union territories of India are similar in nature to that of the President of India at the Union level. Being de jure head of the state government, all its executive actions are taken in the governor's name. While the President of India is 'elected', the governor is 'selected' by the existing central government via imperative processes.

The Governor of a State plays a multifaceted role, he is a vital link between the centre and the States and it is his duty to keep the centre informed about the affairs of the State which help the centre to discharge its Constitutional functions and responsibilities towards the State. But the role played by the Governors in different States in the past and the present and their functioning has been dissatisfactory and has made the office controversial and a bone of contention not only between the Centre and States but also between the ruling and the opposition parties. With the party in power at the centre misused this office to serve its vested interests, as a result, many controversies came up as become an issue of litigation in the courts enormously with the passage of time.

Role and Function of Governor of India under Constitution

1. The primary function of the governor is to preserve, protect and defend the constitution and the law as incorporated in their oath of office under Article 159 of the Indian constitution in the administration of state affairs. All the governor's actions, recommendations and supervisory over the executive and legislative entities of a State shall be used to implement the provisions of the Constitution.
2. As provided by Articles 155 and 156 of the existing Constitution of India, Governors of the States are appointed by the President of India and are answerable to him and hold their offices during the pleasure of the President of India.
3. The Governor, thus, is an appointee of the Central Government in the State, and, in so far as he acts in his discretion, he shall be answerable to the Union Government.
4. Except in matters in which the Governor is required by or under the Constitution to exercise his function in his discretion, the Governor is the Constitutional or formal head of the State and he exercises all his powers and functions on the aid and advice of his council of Ministers. This is so because our Constitution embodies generally the Parliamentary or Cabinet system of Government of the British Model both at the Union and the States.
5. Article 164(1) of the Constitution of India empowers the Governor to appoint the Chief Minister. However, like the discretion of the president in the appointment of the Prime Minister, the Governor's discretion in the appointment of Chief Minister is conditioned by an essential form of Parliamentary form of Government that the Council of Ministers shall be collectively responsible to the State legislative assembly. This means that the leader of a party which commands the majority in the legislative assembly is eligible for appointment as Chief Minister, and the Governor is bound to request him to form the Government. If there is no party commanding a clear majority in the legislative assembly, the Governor may exercise his discretion in the appointment of Chief Minister according to his personal assessment of the situation at that time.
6. Article 72 of the Constitution of India could be reconciled with Article 161 by limiting the power of the Governor to grant pardons to cases not covered by Article 72. If so read, the President alone has the exclusive powers to grant pardons, reprieves, and respites in all cases where the sentence is a sentence of death and both the President and the Governor have concurrent powers in respect of Pardon, Suspension, remission, and commutation of a sentence other than that of death. In other matters, that is in respect of offences against any law relating to a matter to which the executive power of the State extends, the Governor has all the powers enumerated in Article 161 of the Constitution of

India including the power to grant pardons, reprieves, and respites.

7. To put it briefly, the Power of the Governor to grant pardons, reprieves, and respites in all cases where the sentence is not a sentence of death, and to suspend, remit or commute the sentence of any person, is coextensive with the executive power of the State. It, therefore, follows that the Governor has the power to grant a pardon or remit the sentence of a person who is transported for life.
8. In a 5 Judge Bench, the Supreme Court of India has held in *BP Singhal v. Union of India* ((2010) 6 SCC 331) that the role of the Governor of a State is to function as a vital link or bridge between the Union Government and the State Government. He is required to discharge the functions relate to his different roles harmoniously, assessing the scope and ambit of each role properly.
9. A Governor of a State has a dual role. The first is that of a Constitutional head of the State bound by the advice of his Council of Ministers. The second is to function as a vital link between the Union Government and the State Government. In certain special or emergent situations, he may also act as a special representative of the Union Government.
10. The Governor of a State is neither an employee of the Union Government nor the agent of the party in power nor required to act under the dictates of political parties. His office is not subordinate or subservient to the Government of India.
11. He is constitutionally the head of the State in whom is vested the executive power of the State and without whose assent there can be no legislation in exercise of the legislative power of the State. The fact that the Governor holds office during the pleasure of the President does not make the Government of India an employer of the Governor. • There is a distinction between the powers of the President under Article 74 and the Governor under Article 163 of the Constitution. There is some qualitative difference between the position of the President and the Governor. The President under Article 74 has no discretionary powers but the Governor has certain discretionary powers under Article 163(2) of the Constitution of India.
12. In contrast to Article 74, even though Article 163 similarly provides that the Governor of a State is to exercise his functions in consonance with the aid and advice tendered to him by the council of Ministers with the Chief Minister as the head, yet Article 163(2) confers discretionary powers with the Governor when it is so expressly mandated by or under the Constitution.
13. To a limited extent Article 163(2) authorizes Governor to act in his own discretion and in that sense, there is a clear distinction between the power vested in the President and the power vested in the Governor.
14. Governor should act as per the will or advice of the majority party only when the same is in

accord with the Constitution and the laws. (B.R. Kapur v. State of T.N. & Another (20017 SCC 231))

Powers of the Governor

In this respect, the governor has many different types of powers:

Executive Powers

Governor is the head of the State. The Constitution gives executive powers of the state to the Governor. He appoints the Chief Minister and other ministers on the advice of the Chief Minister. Ministers hold office during the pleasure of the Governor.

The Governor can remove the Chief Minister of the province in case he feels that his government does not enjoy the confidence of the majority in the State Legislative Assembly or is not working according to the provisions of the Constitution.

All major appointments (Advocate General, Chairman and Members of Public Service Commission, Vice-Chancellors) in the state are made by the Governor. But in doing so, the Governor depends upon the advice of the State Chief Minister and the State Council of Ministers.

The Chief Minister of the State has to keep the Governor informed about the state administration and the decisions taken by his ministry. Governor can seek from the Chief Minister any information about the state administration. He may call upon the Chief Minister to place the decision of an individual minister before the Council of Ministers for consideration. The President consults the Governor while appointing the judges of the State High Court. The Governor acts as the Chancellor of the state universities.

Normally, the Governor exercises all his executive powers in accordance with the advice of the State Council of Ministers and the Chief Minister. The ministers are responsible for all the acts of the Governor. But during a constitutional emergency in the states the Governor becomes a real executive head of the state uses all executive powers with the help of some advisors.

Legislative Powers

The Governor is not a member of the state legislature and yet he is a part of it. All bills passed by the state legislature become laws only after the signatures of the Governor. He can withhold his assent or can return a bill (other than a money bill) to the legislature for reconsideration. But if the bill is passed a second time, he cannot withhold his assent from that bill. Several legislative measures can be reserved by him for Presidential assent.

The Governor summons and prorogues the sessions of the state legislature. He can dissolve the state legislative assembly. He nominates 1/6 members of the Legislative Council from amongst persons having distinguished careers in the field of science, art, literature or social service, normally all these functions are performed by the Governor under the advice of the State Chief Minister.

When the state legislature is not in session, the Governor can issue ordinances. Any ordinance so issued by the Governor has the same force as the law of the legislature. It, however, ceases to operate after six weeks from the date on which the state legislature

comes into session. It also ceases to operate when a resolution is passed by the state legislature disapproving the ordinance. The Governor issues ordinances only on the advice of the state Chief Minister and his Council of Ministers.

Financial Powers

1. The demand for a grant can be made by the state only on the recommendation of the Governor.
2. The Governor can ask the state Legislature for additional grants under Article 205 of the Constitution.
3. To introduce a Money bill in the State Assembly, the prior recommendation of the Governor is necessary and in its absence, no money bill can be presented in the Assembly.
4. The Contingency Fund of the State can be used by the Governor at his disposal. He can use the fund to meet any unforeseen expenditure if the state Legislature approves it.
5. The recommendations of the Governor are essential for making amendments regarding financial matters.
6. The Governor has the authority to ensure that the annual budget is laid before the House(s) and is also passed by it.

Judicial Powers

The Governor of the state has some judicial powers. He can influence the appointments, postings and promotions of the district judges and other judicial officials. He has the power to grant pardon, reprieve or remission of punishment or to suspend, remit or commute the sentences of any person, convicted of any offence against any law. While appointing the Chief Justice and other judges of the State High Court, the President of India consults the Governor of the Concerned State.

Discretionary Powers

The discretionary authority of the Governor extends mostly in the field of execution work. Some discretionary powers are as follows:

(a) In Appointing a Chief Minister

If there is no clear-cut majority of a party or an alliance of parties in the legislative assembly and there are two claimants for the post of CM, the Governor can appoint the person to be CM whom he thinks fit to provide a stable Government.

(b) Dissolving the Legislative Assembly

Similarly, if the party in power has lost the majority in the Legislative Assembly and the CM advises the Governor to dissolve the Assembly; the Governor can find alternatives to form the Government without going for dissolution.

(c) As an Administrator

By a convention as established in England, Governor sends a fortnightly report to the President about affairs of the State administration, Public law, and order.

(d) Reserve Bill for Consideration of the President

Under Article 200-Governor enjoys the right to reserve a bill for the consideration of the President. Even a money Bill can be reserved.

In the case of a Money Bill, the President may either declare his assent or withhold his assent. In case of a Bill other than a Money Bill, the President

may direct the Governor to return the Bill for reconsideration. The Legislature must reconsider the Bill within 6 months. But it shall not be obligatory upon the President to give his assent in this case too.

(e) Advising the President for the Proclamation of the Emergency

Assessment of the situation, necessitating presidential intervention, in the affairs of the State, and promulgation of an emergency in the State, is a task of vital importance, assigned to the Governor. The government of the State may like to cling to the office and not like to advise him to recommend to the President a proclamation of emergency in the State.

In such circumstances, if the Governor reports to the President a breakdown of the constitutional machinery in the State, it is clearly in accordance with his discretionary power. However, the President may not always act on the advice of the Governor as the latter is after all a nominee of the Central Government and can be partisan in approach.

The Real Position of the Governor

Although the Constitution vests enormous powers with the Governor, in actual practice all these are to be exercised by him only on the advice of the Council of Ministers, the exception being the areas in which he can use his discretion, the Governor's office is one with dignity and respect but without much power. This opinion holds good in normal times, but in abnormal times, the position undergoes a change.

The functioning of this office over the past 50 years of Indian Polity has revealed an enormous gap between the intentions of the Constitution-makers and what has actually happened in practice. The office has come into sharper focus since the fourth general elections (1967) when several States came under the rule of political parties different from the one at the centre.

Since then, center-state relations have come under abnormal strain due to the styles of functioning of different Governors under similar political scenarios. The State Governments also alleged that the ruling party at the Centre had misused the office of the Governor for political gain.

The controversy has intensified in the 1980s to such an extent that a few political parties have gone to the extent of demanding the abolition of the office of Governor Altogether, resulting in the office losing some of its earlier prestige and dignity in the process.

In order to lessen the controversy and to restore harmony in the relations between the Central government on the one hand and the States on the other, a number of suggestions regarding the style of functioning of Governors have been made.

For instance, the Rajamannar Committee (appointed by the DMK government in Tamil Nadu in 1970) suggested that (i) the Governors should be appointed only in consultation with the concerned State government and (ii) the President should give suitable guidelines to the Governors in order to ensure that there is uniformity in the style of functioning of all governors in similar political situations in different States so that the scope for use of discretion on their part is reduced.

Similarly, the Administrative Reforms Commission on Centre-State Relations (1969) suggested that appropriate guidelines should be issued to the Governors by the President.

The conclave of opposition parties in Srinagar in 1983 suggested that the Governors should be appointed only in consultation with the concerned State Chief Minister and for this purpose, the State Government should submit a panel of names to the President of India.

The Central government appointed the Sarkaria Commission in 1983 for making appropriate suggestions so that these relations were made more meaningful and constructive.

The role of the Governor in the changed political system

However, In the last few years, the office of Governor has become an issue of disputes and controversies. The recommendations of the Governors of many States for Presidents rule after dismissing the popular Governments and inviting the parties which did not have the clear majority, to form the Government, on these occasions the Governor did not act independently and in a nonpartisan manner, for which they had to face criticism, day by day the position of the Governors has deteriorated and more controversies have been created. The Governors are now facing a new situation while the centre is ruled by one party whereas in most of the States some other party comes to power. The Governor is a Constitutional Head who performs according to the wishes of the State ministry, In normal circumstances, he will behave in a normal manner, but in abnormal conditions, he can adopt the opposite attitude. In a Federal State, he is a representative of the Central Government, simultaneously his appointment and dismissal are in the hands of the President who will act according to the directions of the Central Ministry as a result there would be a possibility of political conflict and crisis.

Now, the question arises in the changed circumstances how the Governor should act. In the absence of conventions, the Governors had to face many types of problems. The position of Governors became controversial, which resulted in the decline of their respect and prestige. It is possible that in the context of relations between the Centre and the States the Governors are facing difficult situations. It is therefore necessary that in the changed political circumstances, parliamentary conventions should be developed in regard to the behavior and functioning of the Governors. In the context of a new situation, there is a need for fresh contemplation. Whatever may be the conditions it will be expected of the Governor that he should carry out his responsibilities with honesty and full faith, and preserve and defend the Constitution.

Latest Incidents of Use and Misuse of the Discretionary Power

1. On March 18, 2016, Congress's Harish Rawat government in Uttarakhand plunged into crisis after nine MLAs joined hands with the BJP, which staked claim to form the government. The next

day, met Governor K K Paul asked the Chief Minister to prove his majority by March 28.

A day before the trust vote, the Speaker disqualified the nine rebels. The NDA government at the Centre, on the recommendation of the Governor, imposed President's rule the same day without giving Rawat an opportunity to prove his majority. The matter went to court and in April the Uttarakhand High Court quashed imposition of President's Rule and asked Rawat to prove his majority, which he did.

2. In 2017, after Assembly elections in Goa, the Congress emerged the single largest party with 17 seats (out of 40) while the BJP had 13. But Governor Mridula Sinha invited the BJP which had cobbled up a post-poll alliance with some regional parties and independents and formed the Government.
3. In Manipur too, the Congress emerged the single largest party with 28 seats in the 60-member House, but Governor Najma Heptullah invited the BJP first after it submitted a list of legislators supporting it.
4. In the 2018 elections in Karnataka, the BJP emerged the single largest party but fell eight seats short of the halfway mark out of 224. The Congress dramatically announced a post-poll alliance with JD(S) to keep the BJP out. Governor Vajubhai Vala invited BJP's B S Yeddyurappa and gave him 15 days to prove the majority. Yeddyurappa was sworn in on March 17. The Congress rushed to the Supreme Court which curtailed the time given and asked Yeddyurappa to prove his majority on May 19. Unable to get the numbers, he resigned without taking the floor test.
5. In Maharashtra, the Assembly elections in October last year threw up a hung verdict. With possibilities of formation of a stable government not emerging even 15 days after the results, Governor Bhagat Singh Koshiyari recommended President's rule which was imposed. The Congress, Shiv Sena and the NCP began discussions and came to an understanding on November 22 to stake claim for formation of a government with Shiv Sena chief Uddhav Thackeray as Chief Minister. But it was BJP leader Devendra Fadnavis who Koshiyari swore in as Chief Minister on November 23 at 8 am, with NCP leader Ajit Pawar as his deputy. This came after the President's rule was revoked at 5.47 am that day. The Governor had submitted a report recommending revocation at 12.30 am.

The Recommendations of the Committees And commissions

1. In S.R. Bommai case (1994), following the Sarkaria Commission's recommendations, the Supreme Court underlined that the breakdown of constitutional machinery implied a virtual impossibility, and not a mere difficulty, in carrying out governance in a State.

SC 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.

The Court reinstated the governments in Arunachal Pradesh and Uttarakhand which were suspended after the arbitrary imposition of the President's Rule.

2. The Supreme Court in the Nabam Rebia judgment (2016) ruled that the exercise of Governor's discretion Article 163 is limited and his choice of action should not be arbitrary or fanciful. It must be a choice dictated by reason, actuated by good faith and tempered by caution.
3. The Administrative Reforms Commission (1968) recommended that the report of the governor regarding the president's rule has to be objective and also the governor should exercise his own judgment in this regard.
4. The Rajamannar Committee (1971) recommended the deletion of Articles 356 and 357 from the constitution of India. The necessary provisions for safeguards against arbitrary action of the ruling party at the Centre under Article 356 should be incorporated in the constitution.
5. The Rajamannar Committee emphasised that the governor of the state should not consider himself as an agent of the centre but play his role as the constitutional head of the State.
6. The Sarkaria Commission (1988) recommended that Article 356 should be used in very rare cases when it becomes unavoidable to restore the breakdown of constitutional machinery in the State.
7. The commission recommended that before taking action under Article 356, a warning should be issued to the state government that it is not functioning according to the constitution.
8. "Justice V.Chelliah Commission" (2002) recommended that Article 356 must be used sparingly and only as a remedy of the last resort after exhausting all actions under Articles 256, 257 and 355.
9. The "Punchhi commission" recommended that these Articles 355 & 356 be amended. It sought to protect the interests of the States by trying to curb their misuse by the Centre.(Governor).

Research Methodology

For completion of my research work, I have applied the doctrinal or traditional research method in which the research is carried on, based on facts and data stored in the library and archives. It involves material from the primary and the secondary sources such as the statutes, Constitutional provisions, world Constitutions, Judicial decisions, Government and administrative reports, authentic books and Articles

published in standard law journals and magazines, newspapers and material available on websites, and the recent changes and developments in the national, political scenario with the change of Government at the Center.

Aim

The aim of the research is to analyse the feasibility and importance of the Institution of the Governors under the Indian constitution. Also to study and analyse the existing constitutional provisions relating to the Governor, and to explore and highlight the various lacunas in them, and suggest suitable amendments to remove them.

Conclusion and Suggestions

In India there is a parliamentary form of Government, the office of Governor is very essential and important, as the Constitutional Head of the State, it can not be abolished but has to be reformed and maintained, it is to be seen so that the functioning of the institution improves, for that purpose, the legislature, executive, judiciary, media, and all the political parties should come forward and make collective efforts to make the reforms. The media should play a creative role and enhance awareness to begin a healthy debate, the Government should inculcate the consent of all the parties after calling an all-party meeting and by forming a committee to prepare a draft for the amendment in the Constitutional provisions relating to the Governors with the consultation of the legal and constitution experts keeping in mind the judicial directives, the draft should be presented in the parliament and a detailed discussion should take place in both the houses and rising above party politics the changes should be made in the constitution, for the improvement of the position and the functioning of the constitutional office of the Governors.

1. The President should establish a standing committee consisting of such members who are impartial popular and eminent for selection and recommending the name of the Governor, including the Vice President, Speaker of Lok Sabha, and the leader of opposition in both the houses of parliament to select the Governors, one more committee consisting of legal experts, members of parliament and eminent persons from public life should be constituted, to assist the first committee, advice of this committee regarding the appointment of the Governor should be considered by the President.
2. The list of the candidates of Governorship should be approved by the National Development Council. The list of the proposed names should be prepared of the people from the field of education, art, literature, sports, social work, science, legal luminaries, retired defense personnel, and intellectuals, names of such persons should be included in the list of the candidates for the Governorship who can understand the problems of the people and can get respect from the other political parties also.

3. Such persons should be appointed as Governors, whose personality and conduct is exemplary, retired, veteran overaged politicians who are supporters of the ruling party at the Centre should not be appointed. People having non-controversial life. Neutral, impartial, nonpartisan, dignified, and dynamic personalities should be appointed as Governors who can perform their Constitutional duties perfectly. The age factor is to be kept in mind physically and mentally fit people are only to be appointed.
4. As far as possible the will of the Chief Minister of the concerned State should be respected, regarding the appointment of the Governor in the State, to avoid undue tensions. Recently it has been seen in many states that there have been rifts and disputes between the Governor and the Chief Minister, efforts should be made to avoid this, and therefore, this practice should be adopted compulsorily in every case that the person who is appointed as the Governor, is acceptable to the Council of ministers, therefore before appointing the Governors, the Central Government should consult the Chief Minister of the concerned State.
5. The five-year term of the Governors should be strictly provided generally subject to certain exceptions. The Governor should not be removed from his post unless serious charges are leveled against him, for the misuse of the powers. Grounds for premature removal from the office should be laid down, such as corruption, bribery, sedition, proved misbehavior, inefficiency, and violation of the Constitution. There should be no removal based on political ideology opposite to that of the central government.
6. The Administrative reforms commission in its report has suggested that a person should be appointed as Governor only once, in some cases, it has been noticed that in order to grab the post of Governor a second time, some Governors surrendered to the unjust directions of the Central Government. Therefore by adopting the practice of appointing the Governor once, the conflicts can be controlled. No person should be appointed as the Governor, more than once.
7. The appointment of the Governor should be made by rising above the party politics. The defeated politicians should not be appointed as the Governors. No political appointments and no political removals are to be made. The politicization of the Institution is to be stopped and banned forever.
8. In recent times, conditions have become such in which the dismissal of the Governor and the transfer in fact have resulted in controversies

between the State and the center. The central Government by adopting a limited role in respect of Governor should keep as far as possible the post of Governor beyond political controversies.

9. Complete foolproof guidelines cannot be laid down in respect of contingencies arising in the future. In fact, in the present context, the Governor himself can use his discretion as to the last option, it is necessary that only such persons who have knowledge about parliamentary democracy should be appointed as Governors and should be kept away from political pressure and allowed to carry out their Constitutional responsibilities freely. Governor's own conduct can earn them respect from all quarters. They should be allowed to function impartially. Once appointed by the President as the Governor, there should be no undue pressure on them. The Central Government should not unnecessarily interfere with the functioning of the Governors and use them as tools to implement its agenda and destabilize the opposition-ruled State Governments by using them as pawns.
10. The Governor should use his wisdom and take the decisions independently. The occupants of the Governor's office should keep in mind that they owe their allegiance to the Constitution of India and should rise above party politics and discharge their Constitutional obligations perfectly. It is incumbent that by providing an impartial leadership they should contribute to the development and welfare of the State.

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