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## THE CONSTITUTION AND REALITY OF THE GOVERNOR'S ROLE IN INDIA: AN EXAMINATION OF THE POWERS, DUTIES, AND RESPONSIBILITIES OF THE GOVERNOR

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### ABSTRACT

*A controversial discussion about the governors' discretionary power has been going on since the Indian Constitution was adopted. Being an unelected constitutional government member, the Governor's Office has been caught in the middle of turmoil. According to the Constitution of India, the governor is responsible for maintaining law and order in the state, appointing the chief minister and other ministers, and ensuring the functioning of the state's legislative and executive bodies. However, in the reality of Indian politics, the governor's role and power can vary widely depending on various factors, such as the political composition of the state, the ruling party at the Centre, and the personal beliefs and biases of the governor. In some cases, governors may act as a mere rubber stamp for the ruling party at the Centre, while in others, they may exercise significant influence over the state's politics. There are several instances of the Governor's position being abused, frequently at the direction of the Centre's ruling party. Typically, the appointment process is what causes it. In several instances, the central government has selected politicians and former bureaucrats who identify with a specific political ideology as governors. This violates the neutral seat required by the constitution and has led to bias, as it appears to have in Karnataka and Goa. President's Rule (Article 356) recommendations from governors have sometimes been based on 'objective facts,' but rather on political whims or preferences. Hence, this paper analyses some of the issues pertaining to choosing the chief minister, determining when to demonstrate legislative majority, requesting information about daily operations, appearing to take a long time to assent to bills or reserving bills for the President, criticizing specific state government policies. Therefore, the methodology used in this paper is primarily analytical and supported by statistical data. There are a lot of recommendations and suggestions given by various commissions like Punchhi and Sarkaria to solve these kinds of issues coming up. The "Punchhi panel - 2010" advocated including a clause allowing the state assembly to remove the governor from office. The governor's appointment should include input from the state's top minister. The Sarkaria Commission advised against frequently using Article 365. Enhancing India's federal system is necessary to stop gubernatorial abuse. The governor must exercise his discretion and personal judgment while acting responsibly, impartially, and effectively for the smooth operation of the government.*

## I. INTRODUCTION

The Indian Constitution establishes parliamentary rule both at the state and federal levels. The governor simply serves as a fictitious executive; the real executive is the council of ministers, which is presided over by the chief minister. In other terms, unless he is obliged to act independently, the governor must execute his authority and perform his duties with the assistance and advise of the council of ministers led by the chief minister. Our founding fathers envisioned a governor who would serve as a wise companion and advisor to the Council of Ministers. He ought to be someone who is seen as above parties and politics. This naturally occurs at the same time as a single party emerging with a sizable majority at the Center. Karnataka, Madhya Pradesh, Kerala, Maharashtra, and of course, West Bengal's governor over the past few years have all played their roles in a way that has made them very contentious without necessarily enhancing the prestige of the post. In his speech on the constitutional role of Governors, Dr. B.R. Ambedkar described how a Governor should use his discretion not as "representative of a party" but as "the representative of the people as a whole"<sup>301</sup>

According to the Constitution's requirements, the Governor's function has three key aspects, which are as follows:

- Serving as the legitimate head of State under a system of parliamentary democracy;
- Serving as a key conduit between the Union Government and the State Government; and
- As a representative of the Union Government in a limited number of areas under normal circumstances [e.g., Article 239(2)]<sup>302</sup> and in a wide range of areas under unusual circumstances [e.g., Article 356(1)].

The current disputes revolve around the following topics: choosing the chief minister, assessing when to demonstrate legislative majority, requesting information about daily operations, appearing to take a long time to assent to bills or reserving bills for the President, criticising specific state government policies, and using the governor's authority as chancellor of state universities.

In this research, we make an effort to pinpoint the necessity of maintaining the Governor's role as the state's appointed head of government. We follow the path of the Constituent Assembly Debates pertaining to the establishment of the post of the Governor in order to evaluate what this position was intended to encompass given that the debates in this area continue to be extremely controversial even now. Additionally, we review the arguments against the use of "governor's discretion" and examine Supreme Court rulings that emphasise its restrictions, as well as the Centre-State relations suggestions made by the Sarkaria and Punchhi Commissions.

## II. CONSTITUTIONAL POSITION, POWERS AND DUTIES

### A. CONSTITUTENT ASSEMBLY DEBATES:

The office of the Governor was a hotly debated topic in the Constituent Assembly. Representatives stood to speak on this matter after it had been sufficiently addressed in depth. The Provincial Governor's method of appointment—whether it would be an elected position or a nominated one—was at the centre of these disputes. While some argued that a "elected" Head would be consistent with the democratic ideals that the Constitution aims to establish, the majority of people were convinced that the position of the Governor needed to stand apart from that of the Chief Minister, who would be the leader of the elected government in the state and be in charge of managing the government as a result.<sup>303</sup>

<sup>301</sup> Governor's Role, Controversies and Reforms, June 21, 2021, <https://journalsofindia.com/governors-role-controversies-and-reforms/>

<sup>302</sup> INDIA CONST. art. 239, cl. 2.

<sup>303</sup> Constituent Assembly Debates, May 31, 1949, Vol. VIII, speech by K.M. Munshi, ¶46, available at <http://cadindia.clpr.org.in/article/AVsOrOp67SXahIyw4hQO--constituent-assembly-of-india-Vol->

The second issue, which was hotly debated and sparked fervent arguments on both sides, was the Governor's discretionary powers as they were laid forth in the original Constitution. H.V. Kamath, S.L. Saxena, and Pt. Hriday Nath Kunzru, for instance, highlighted a number of concerns about the ramifications of such laws. By removing the phrase "except in so far as he is required by or under this Constitution to exercise his functions or any of them in his discretion" from the wordings of the Draft Article 143, Kamath attempted to introduce an amendment to limit the powers of the governor, effectively requiring the governor to act strictly in accordance with the advice of the Council of Ministers.<sup>304</sup>

#### B. CONSTITUTIONAL PROVISIONS:

The various provisions laid down under the constitution which establishes governor's post and gives the governor the powers and duties are as follows:

Firstly, as per Article 153, it establishes the post of governor. The Governor serves as the State's executive head and holds a status in the state that is similar to that of the President of India. According to Article 154 of the Constitution, which provides that the Governor has the Executive Power of the State, he is granted this authority. In accordance with this, the Governor has executive authority over the State, which he may exercise either directly or through persons who report to him.

The election of the State's governor is outlined in Article 155 of the Constitution. He is appointed by the President of India by a warrant that bears his hand and seal. As a result, unlike the President, who is elected, the Governor is chosen without a vote. A person can be appointed as Governor by the President, unlike the President, who is elected. Therefore, this is the reason governor is not accountable to the

public since he/she is not elected by the people but instead chosen.

Article 163 states that the Council of Ministers assists and counsels the Governor. The Governor's council of ministers is supposed to support and counsel him, which indicates that any actions the Governor takes must be in response to that support and counsel. The statement's conclusion is that the council of ministers' help and advice serve to curb the Governor's discretionary power, which is not unrestricted.

As per Article 174, the House or each House of the State Legislature may be called to session by the Governor at any time, although no more than six months may pass between the House's final meeting of one session and the date set for the House's first meeting of the following session.<sup>305</sup>

In the given situations, the Governor has the express discretion specified in the Constitution.

- Putting a bill on hold for the president to consider.
- Proposal that the state be placed under the President's Rule.
- While performing his duties as the territorial administrator of a nearby union territory (in case of additional charge).
- Calculating the income accruing from licences for mineral exploitation that the governments of Assam, Meghalaya, Tripura, and Mizoram shall pay to an autonomous Tribal District Council.
- Requesting information from the chief minister regarding state legislative and administrative issues.

The governor also has situational discretion, or hidden discretion derived from the requirements of an ongoing political situation, in addition to the foregoing constitutional authority. The situational discretion relates to the following scenarios:

[viii?main\\_query=Governor%20Celection%20of%20Governor&p=62](#) (Last visited on April 2, 2023)

<sup>304</sup> Constituent Assembly Debates, June 1, 1949, Vol. VIII, speech by H.V. Kamath, available at <http://parliamentofindia.nic.in/ls/debates/vol8p13a.htm> (Last visited on April 1, 2023).

<sup>305</sup> INDIA CONST. art. 174.

- Appointing a chief minister when no party has a clear majority in the state legislative assembly or when an incumbent chief minister passes away abruptly and no one is immediately in a position to take over.
- Termination of the council of ministers if it is unable to demonstrate support from the state legislative assembly.
- If the council of ministers loses its majority, the state legislative assembly is dissolved.

### III. MISUSE OF POWER AND THE RECENT CONTROVERSIES

According to the Constitution, the Governor has the authority to call and prorogue the House of the Legislature. As required by the Constitution (Article 174 read with Article 163), the Governor must follow the Council of Ministers' recommendations when calling a special session of the House and proroguing it. The Sarkaria Commission also suggested that the opinion of the Council of Ministers regarding calling a House of the Legislature to order and prorogue it should be regarded as binding on the Governor so long as it has the support of the Legislative Assembly and is not obviously illegal. In the 2016 case *Nabam Rebia and Bamang Felix v. Deputy Speaker of the Arunachal Pradesh Assembly*<sup>306</sup>, the Constitution Bench of the Supreme Court explicitly stated that the Governor does not have sole authority to call the House and is therefore not permitted to act independently or at his or her discretion. Simply put, this indicates that the Governor must follow the Chief Minister's advice. The Governor went above his authority by asking that the Chief Minister give him the session's topic before the House had met. The business of the House cannot be decided by the governor. The only person who can give the Assembly business to do is the Chief Minister. The Governor violated by using his "discretion" instead of carrying out his standard constitutional executive duty. I think he acted with discretion because of

political factors rather than constitutional requirements.

Where the Governor has grounds to suspect that the Ministry no longer holds the majority, he may call the Chief Minister to address the Assembly, according to a suggestion made by the Committee of the Governors, which the President created on November 26, 1970. The Governor should call a special session of the Assembly if the Chief Minister neglects or declines to call it for a "Floor Test" in order to guarantee that the state's form of responsible government operates in line with the requirements outlined in the Constitution. In the instance of Rajasthan's Congress-led government, which held a solid majority in the House despite the now-over crisis, there was no such problem. Instead, the Governor stood in the way of the elected government's ability to fulfil its obligations to the assembly and Rajasthan's eight crore residents. The Governor violated the pledge he swore under Article 159 "to maintain, safeguard, and defend the Constitution and subject himself to the service and wellbeing of the people of the State" by failing in his responsibility as the conscience keeper of the Constitution.<sup>307</sup>

But, the Supreme Court's ruling in *S.R. Bommai v. Union of India* marked a turning point in the regulation of such unrestrained discretion. The Karnataka Government, which was then led by Chief Minister S.R. Bommai, was unfairly dismissed; this was contested before the Supreme Court. While acknowledging that the President's satisfaction with the Governor's report was certainly subjective, the Court emphasised the right to judicial review of the evidence used to support that satisfaction<sup>308</sup>. It was decided that the Court had the power to evaluate the information used by the Cabinet to provide counsel to the President if it believed that the decision-making process had been motivated by malice, including the Governor's

<sup>306</sup> *Nabam Rebia v. Dy. Speaker, Arunachal Pradesh Legislative Assembly*, (2016) 8 SCC 1.

<sup>307</sup> Jaiveer Shergill, Aug 11, 2020, <https://www.outlookindia.com/website/story/opinion-governors-powers-need-to-be-redefined-else-raj-bhawan-will-continue-to-facilitate-coups/358>.

<sup>308</sup> *S.R. Bommai v. Union of India*, (1994) 3 SCC 1.

report. The Court emphasised that if a decision to dissolve a legislative assembly is made without receiving the necessary parliamentary authorization, it has the authority to reject that decision.

#### A. DELHI:

The tussle between lieutenant governors (LG) and the government is continuously growing. Kejriwal and the LG contend that the government is not acting in the best interests of the people. The LG has established inquiry panels for a number of Delhi government initiatives and given a notice of recovery to the Chief Minister. Is it possible for any LG to recover from an elected Chief Minister? AAP won the majority in the most recent municipal elections, but they weren't immune from the issue involving LG and the Kejriwal administration. Because of this, Delhi still lacks a mayor. Without consulting the elected administration, the LG nominated 10 purported BJP workers to serve as corporators in the Municipal Corporation. The LG has only ever given seals to individuals that they have nominated; but, this time, it is said that the list originated from the BJP office.

#### B. TAMIL NADU:

The Governor and the DMK-led Secular Progressive Alliance (SPA), which is in power in Tamil Nadu, have been at odds. This recently reached its boiling point when the governor said that the state should be referred to as "Tamizhgam" rather than Tamil Nadu, which sparked a significant public uproar among both the ruling DMK and its allies. After that, the governor's effigy was burned during protests throughout the state. The Governor clarified that he was speaking in the perspective of history, though.

#### C. WEST BENGAL:

No one is unaware of the conflict that existed between Mamata Banerjee and Jagdeep Dhankar, the West Bengal governor at the time. Both used to freely level political accusations at one another. Dhankar, who was not the vice-

president of the nation, was more well-known as Banerjee's adversary than as "His Excellency."

#### IV. CONCLUSION:

It is frequently understated how important and relevant the job of governor continues to be. While critics and local political satraps have long called for the post's abolishment, it is undeniable that it still fulfils crucial constitutional duties. Even when no government has risen to authority or is unable to manage effectively during constitutional crises in states, the figurehead of the Governor secures the state's survival. The Sarkaria and Punchhi Commission reports covered the three problems of nomination and removal, tenure, and discretion—which are at the centre of this debate—in great detail. Little progress can be made in this area, though, until these proposals are put into action. We think that excluding professional politicians from being selected as governors could go a long way towards reducing their cooperation in political meddling by the federal government in the business of the states.

In order to ensure transparency in the use of Governors discretion, the Sarkaria and Punchhi Commissions' recommendations ought to be implemented right now. This should be done in addition to the security of tenure that the B.P. Singhal case has now established. Following the Supreme Court's decisions on this matter from beginning to end discloses that while the Court has called for regulating the Governor's exercise of discretionary powers, the decisions have also highlighted the necessity of continuing governor's discretion within the bounds of the Constitution. We think that putting this important guiding principle into practise will contribute to restoring the governor's apolitical role as it was originally intended by our Constitution.

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