



Role Of Governors Under The Indian Constitution: The Emerging Issues

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ABSTRACT

In India, all the States have the same pattern of Government as the Centre. According to Indian Constitution, there shall be a Governor of each State. Governors exist in the States, while Lieutenant Governors and administrators exist in Union Territories. A Governor acts as Constitutional Head of the State and takes all his/her decisions based on the advice of Chief Minister and his/ her Council of Ministers. Governor is appointed by the President of India by a warrant under his hand and seal, on the recommendations of the Union Council of Ministers. Governor acts as bridge between the Union and Centre. He reports fortnightly on the affairs of the State. His usual term of office is five years, but he holds office during the pleasure of the President. The Governor's powers and functions have become controversy in recent times. The recent controversies surrounding the Office of Governor and the emerging issues are avoidable and unnecessary. Such controversies and emerging issues malign the dignity of the high Constitutional Office. The Union and State Governments should abide by the spirit of the Constitution as well as the Supreme Court's Judgments in this regard. The implementation of recommendations of various Commissions can ensure that such needless controversies do not arise in future. The Governors should also act according to their Constitutional mandate, rather than acting as political agents. An active but unbiased Office of Governor can strengthen the Union State relationship and the federal structure. This paper deals with the appointment, powers and functions of the institution of Governor, as well as the anomalies and emerging issues surrounding the powers vested in them in the matters of their role and granting assent to the Bills passed by the State Legislature, Judicial powers.

Keywords: Indian Constitution, Chief Executive Head of the State, Governor powers and functions, Union State Relations, Federalism, Emerging issues, Controversy.

In India, all the States have the same pattern of Government as the Centre. Article 153 to 167, Part-VI of the Constitution deals with State executive. However, unlike Vice-President at centre there is no provision for office of Vice-Governor in the state. Powers and authority of the State executive extend only to the territory comprising the State, while that of the Union Executive extend to the whole of India.

The Governor: The Constitution provides for an office of the Governor in the States¹. Usually, there is a Governor for each State, but the Constitution (seventh amendment) Act of 1956, facilitated the

appointment of the same person as a Governor for two or more States or Lt. Governor of the Union Territory. A Governor is the Chief Executive Head of a State, but like the President of India, he is a nominal executive head. When a Governor discharges the responsibilities of more than one State, he acts on the advice of the Council of Ministers². The Governor also acts as an agent of the Central Government and therefore, the office of the Governor has a dual role.

Appointment and Conditions: A Governor is appointed by the President of India³ by a warrant under his hand and seal, on the recommendations of the Union Council of Ministers. He is an agent of the Centre to which he reports fortnightly on the affairs of the State. His usual term of office is five years, but he holds office during the pleasure of the President⁴. He can be asked to continue for more time until his successor takes charge. He can also be transferred from one State to another by the President. He can also resign any time by addressing his resignation to the President. The Legislature of a State or a High Court has no role in the removal of a Governor.

A person may be appointed as a Governor for any number of terms. The Constitution under Article 157 lays down the following two qualifications for the appointment of a person as a Governor. i) He should be a citizen of India. ii) He should have completed the age of 35 years. The Constitution under Article 158 lays down the conditions for the Governor's office: i) He should not be a member of either House of the Parliament or of the House of the State Legislature. ii) He should not hold any other office of profit. iii) His emoluments, allowances and privileges shall be determined by the Parliament of India. When the same person is appointed as the Governor of two or more States, the emoluments and allowances payable to him shall be allocated among the States in such proportion as determined by the President of India. His emoluments and allowances should not be diminished during his term of office.

With regards to appointment, two conventions have evolved: (A) The President consults the Chief Minister of the concerned state while appointing the Governor in order to ensure smooth functioning of the Constitutional Machinery in the state. (B) In order to avoid bias the Governor is from the other state. These healthy conventions, though recommended by Sarkaria Commission on Centre-State relations are followed more in letter than spirit. The Oath of the office to the Governor is administered by the Chief Justice of the concerned State High Court and in his absence, the senior-most Judge of that Court available.

Salary, Allowances & Immunities to the Governor: The salary and allowances of the Governor are drawn from the Consolidated Fund of State The Governor is entitled to a salary of ₹ 3.5 lakhs per month, rent-free accommodation and other allowances under the provision of the Governor (salary and other allowances) Act, 1982. Since 1987, it has been provided that the salary and other allowances of the Governor cannot be diminished to his disadvantage during the term of his office. Governor is not answerable to any court for the performance of the power and duties of his office⁵. No criminal proceedings can be instituted or continued in any form as long as a person holds the office of the Governor. However, no such immunity is available in case of civil cases, the only respite being that the Governor should be given a two months' prior notice containing full details of such proceedings. A Court cannot issue an arrest warrant or other punishments during his term of the office.

Powers and Functions: A Governor possesses Executive, Legislative Financial and Judicial powers analogous to the President of India. He has no diplomatic, military or emergency powers like the President. The Governor has also been given certain discretionary powers which are not available to the President.

Executive Powers⁶: All Executive actions of the Government of a State are formally taken in his name. He can make rules specifying the manner in which the orders and other instruments made and executed in his name shall be authenticated. He can make rules for more convenient transaction of the business of a

State Government and for the allocation among the Ministers of the said business. He appoints the Chief Minister and other Ministers on the advice of the Chief Minister. They hold office during the pleasure of the Governor. There should be a Tribal Welfare Minister in the States of Jharkhand, Chhattisgarh, Madhya Pradesh and Orissa⁷ appointed by the Governor. He appoints the Advocate-General of a State⁸ and determines his remuneration. The Advocate General holds office during the pleasure of the Governor. He appoints the Election Commissioner for the State and determines the conditions of service and tenure of the office. He appoints the Chairman and the Members of the State Public Service Commission. However, they can be removed only by the President of India and not by the Governor. He can seek any information relating to the civil administration of the affairs of the State and proposals for legislation from the Chief Minister. He can ask the Chief Minister to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council of Ministers. He can recommend for the imposition of the Constitutional Emergency in a State to the President. During the period of the President's rule in a State, the Governor enjoys the extensive executive powers as an agent of the President. The Governor has the power to suspend the Members of the State Public Service Commission. Though the Governor does not have the power to appoint the Judges of the High Court but his consultation is required by the "President for the appointment of the Judges of the High Court.

Legislative Powers ⁹ : Governor is an integral part of the State Legislature¹⁰. He has the right of summoning or proroguing the State Legislature and dissolving the State Legislative Assembly. He can address the State Legislature at the commencement of the first session after each general election and the first session of each year. He can send message to the House or the Houses of the State Legislature, with respect to a Bill pending in the Legislature or otherwise. He can appoint any member of the State Legislative Assembly to preside over its proceedings when the offices of both the Speaker and the Deputy Speaker fall vacant simultaneously¹¹. He decides on the question of disqualification of the members of the State Legislature in consultation with the Election Commission. When a bill is sent to the Governor after it is passed by the State Legislature, he has the following options:

i) Give his assent to the Bill¹², or ii) Withhold his assent to the Bill¹³, or iii) Return the Bill (If it is not a Money Bill) for reconsideration of the State Legislature. If the State Legislature again passes the Bill with or without amendments, a Governor has to give his assent to the Bill.

He must reserve for the consideration of the President, any Bill passed by the State Legislature which endangers the position of the State High Court. In addition, as identified by Soli Sorabji, the Governor can also reserve the Bill if it is of the following nature:

i) ultra vires, that is, against the provisions of National Importance ii) opposed to the Directive Principles of State Policy iii) dealing with compulsory acquisition of property under Article 31A of the Constitution.

Similar examples: The Speaker's remarks assume significance in light of a Bill passed by the Tamil Nadu Assembly in September 2021 seeking exemption for the students from the state from the National Eligibility Cum Entrance Test (NEET) necessary for undergraduate Medical College admissions. In 2018, the Tamil Nadu assembly passed a resolution calling for the release of seven prisoners convicted in the assassination of Rajiv Gandhi. The resolution was sent to the Governor who was present at that time, but he did not take any action for nearly two years. During a hearing in January 2021, the Supreme Court expressed dissatisfaction with the delay. Without taking a call, the Governor passed the buck in February, stating that the President had the authorized authority to decide on the resolution.

He can promulgate Ordinances when the State Legislature is not in session¹⁴. These Ordinances must be approved by the State Legislature within six weeks from its reassembly. He can also withdraw the Ordinance any time. He lays the reports of the State Public Service Commission, State Finance Commission and the Comptroller and Auditor General relating to the accounts of the State, before the State Legislature¹⁵. He ensures the laying of the State budget before the Legislature.

Financial Powers : Money Bill¹⁶ can be introduced in the State Legislature only with the prior recommendation of the Governor. No demands for a grant can be made except on his recommendation. . He can make advances out of the Contingency Fund of the State to meet any unforeseen expenditure. He constitutes a Finance Commission after every five years to review the financial position of the Panchayats and the Municipalities. The Constitution confers on the Governor, the duty to get prepared and introduced to the State Legislature, the annual budget and also the supplementary budgets, if necessary¹⁷.

Judicial Powers¹⁸: The Governor can grant pardons, reprieves, respites and remissions of punishment or suspend, remit and commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends. The pardoning power of the Governor differs from that of the President in respects: i)The President can pardon death sentence while the Governor cannot. ii)The President can pardon sentences inflicted by the Court martial while the Governor cannot. Governor is consulted by the President while appointing the Judges of the concerned State High Court. Governor makes appointment, postings and promotions of the District Judges in consultation with the State High Court¹⁹. He also appoints persons to the Judicial Services of the State (other than District Judges) in consultation with the State High Court and the State Public Service Commission.

Emergency Powers : If the Governor is satisfied that the Government of the State cannot be carried on in accordance with the provisions of the Constitution, he may, under Art. 356 recommend to the President impose the President's rule (Constitutional Emergency) in that State. As soon as the President rule is imposed, the administration of the State is carried on by the Governor acting as the representative of the President.

Emerging issues: Governor holds office till pleasure of the President²⁰. Supreme Court in many cases²⁴has clarified the law that the Governors hold office till the pleasure of the President. The prerogative of the appointment and removal of the Governor rests solely with the President and even though the Constitution provides a five year term period for the Governor, the President is free to warrant the removal of the Governor prior to the completion of the tenure.

In a public interest litigation it was argued that "a Governor, as the Head of the State, holds a high constitutional office which carries with it important constitutional functions and duties; the fact that the Governor is appointed by the President and that he holds office during the pleasure of the President does not make the Governor an employee or a servant or agent of the Union Government; and that his independent constitutional office is not subordinate or subservient to the Union Government and he is not accountable to them for the manner in which he carries out his functions and duties as Governor. Thus was submitted that "a Governor should ordinarily be permitted to continue in office for the full term of five years; and though he holds office during the pleasure of the President, he could be removed before the expiry of the term of five years, only in rare and exceptional circumstances, by observing the following constitutional norms and requirements." The Government, on the other hand, submitted that "the power of the President to remove a Governor under Article 156(1) is absolute and unfettered. The term of five years provided in Article 156(3) is subject to the doctrine of pleasure contained in Article

156(1). The Constitution does not place any restrictions or limitations upon the doctrine of pleasure. Therefore, it is impermissible to read any kind of limitations into the power under Article 156(1). The power of removal is exercised by the President on the advice of the Council of Ministers. The advice tendered by the Council of Ministers cannot be inquired into by any court, having regard to the bar contained in Article 74(2). It was therefore urged that on both these grounds, the removal of Governor is not justiciable."

The Constitutional Bench, in this background, summed up the position of law as under;

- i) Under Article 156(1), the Governor holds office during the pleasure of the President. Therefore, the President can remove the Governor from office at any time without assigning any reason and without giving any opportunity to show cause.
- ii) Though no reason need be assigned for discontinuance of the pleasure resulting in removal, the power under Article 156(1) cannot be exercised in an arbitrary, capricious or unreasonable manner. The power will have to be exercised in rare and exceptional compelling reasons. The compelling reasons are not restricted to those enumerated by the petitioner (that is physical/mental disability, corruption and behaviour unbecoming of a Governor) but are of a wider amplitude. What would be compelling reasons would depend upon the facts and circumstances of each case.
- iii) A Governor cannot be removed on the ground that he is out of sync with the policies and ideologies of the Union Government or the party in power at the Centre. Nor can he be removed on the ground that the Union Government has lost confidence in him. It follows therefore that change in government at Centre is not a ground for removal of Governors holding office to make way for others favoured by the new government.
- iv) As there is no need to assign reasons, any removal as a consequence of withdrawal of the pleasure will be assumed to be valid and will be open to only a limited judicial review. If the aggrieved person is able to demonstrate prima facie that his removal was either arbitrary, malafide, capricious or whimsical, the court will call upon the Union Government to disclose to the court, the material upon which the President had taken the decision to withdraw the pleasure. If the Union Government does not disclose any reason, or if the reasons disclosed are found to be irrelevant, arbitrary, whimsical, or malafide, the court will interfere. However, the court will not interfere merely on the ground that a different view is possible or that the material or reasons are insufficient.

The role, powers, and discretion of the Office of Governor have been the subject of Constitutional, Political, and Legal debate for decades. The relationship between the Office of Governor and the elected Government has been strained and tense in multiple States in recent times. Critics argue that the recent political controversies between Governors and State Government pose challenge to the functioning of the federal structure as envisaged in the Constitution, and also tarnish the standing of the dignified Constitutional post. Constitutional Experts contend that to avoid such developments, Governors should stick to their Constitutional mandate.

The recent controversies associated with the Office of Governor: In the State of Tamil Nadu in January 2023, the Governor refused to read some parts of the Governor's address at the beginning of the session of the State Legislative Assembly. He introduced some of his own words into it. The Governor also walked out of the House after the Assembly passed a resolution to put on record only the original speech that was prepared by the State Government for the Governor. In January 2022, the State Government had taken exception to Governor's Republic Day speech articulating the benefits of NEET,

the medical entrance exam. Tamil Nadu Assembly had passed a Bill to exempt the State from NEET; the Governor had sent it back to the Legislative Assembly.

In the State of West Bengal, there was a public spat between the Governor and the Chief Minister. The Chief Minister went to the extent of blocking the Governor on social media. The Governor and the CM had differences on several issues, including the administration and appointments in State run Universities. The West Bengal Assembly (June 2022) passed a Bill paving the way for making the Chief Minister the Chancellor of State Universities replacing the Governor from the position.

In the State of Kerala, Kerala's Governor sought the resignation of nine Vice-chancellors following a Supreme Court judgement setting aside the appointment of the Vice-Chancellor of a Technology University. The Governor had also said that the statements of individual ministers that lower the dignity of the office of the Governor, can invite action including 'withdrawal of pleasure'.

Article 164(1): The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister, and the Ministers shall hold office during the pleasure of the Governor.

In the State of Jharkhand, The Governor of Jharkhand didn't act on the advice of the Election Commission of India to disqualify the Chief Minister of Jharkhand for violation of electoral norms.

The delay by Governor resulted in prolonged political uncertainty in the State. The

reasons for controversies associated with the Office of Governor:

Appointment and Removal of Governor: The Governor is appointed by the President and holds the Office during the pleasure of the President. There are no specified qualifications for appointing a person as the Governor (apart from being a Citizen of India and being above 35 years of age).

The President appoints and removes the Governor based on the recommendations of the Union Government. Thus the Governor tends to act according to the liking of the Union Government.

Constitutional Discretion: According to Article 163, there is a Council of Ministers to aid and advise the Governor to exercise his/ her functions. However, the Constitution provides certain discretionary powers to the Governor, where he/ she can act without the advice of the Council e.g.,

(a) The Governor can reserve a Bill passed by the State Legislative Assembly for the consideration of the President of India; (b) Exercising his/her power under Article 356 to recommend President's Rule in the State; (c) The Governor can appoint Chief Minister when no political party has a clear majority; (d) The Governor can dismiss the Council of Ministers if unable to prove confidence in the State Legislative Assembly etc. among others. The exercise of the discretion sometimes result in political differences between the Governor and the State Government (e.g., reservation of a Bill).

Political Reasons: The conflict between the Office of Governor and the Council of Ministers/Chief Minister is more common when different political parties are in power at the Union and State level. This shows that the conflict is largely due to political differences e.g., in West Bengal, Kerala, Tamil Nadu, Jharkhand are ruled by different political parties than the Centre.

The Supreme Court Judgments regarding the Office of Governor:

Shamsher Singh vs. State of Punjab(1974): The Supreme Court held that the Governor is bound to act in accordance with the aid and advice of the Council of Ministers headed by the Chief Minister. Article 154(1) makes it clear that the executive power of the State is vested in the Governor, but shall be exercised by him in accordance with the Constitution.

SR Bommai vs. Union of India (1994): The case was concerned with the use of Article 356 and the Governor's power to dismiss a State Government. The Supreme Court ruled that whether the State Government has the majority should be tested on the floor of the House. It shouldn't be based on the subjective assessment of the Governor.

Rameshwar Prasad vs. Union of India (2006): The Supreme Court held the Governor's decision to dissolve the Assembly as unconstitutional and mala fide.

Nabam Rebia vs. Deputy Speaker (2016): The Governor had went against the advice of the State Cabinet and called the session of the Legislative Assembly at an earlier date (against the recommended date). The SC confirmed that the Governor does not enjoy broad discretionary powers and is always subject to Constitutional standards. The Court concluded that the Governor's discretion did not extend to the powers conferred under Article 174. Hence, he could not summon the House, determine its legislative agenda or address the legislative assembly without consultation. (Article 174 is related to the Sessions of the State Legislature, prorogation and dissolution).

The recommendations of Bodies/Commissions regarding the Office of Governor: The Administrative Reforms Commission (1969): The Commission recommended that non-partisan persons having long experience in public life and administration should be appointed as the Governors of a State.

Sarkaria Commission (1988): (a) Appointment of Governor: (i) The Governor should be appointed after consultations with the Chief Minister of the State; (ii) The Governor should be eminent in some walk of life and from outside the State; (iii) The person should be a detached figure without intense political links, or should not have taken part in politics in the recent past; (iv) The person should not be a member of the ruling party; (b) Removal of Governor: (i) The Governor should be removed before the end of the term (5 years) only on the grounds if doubts are raised about his morality, dignity, constitutional propriety etc.; (ii) In the process of removal before the end of the term, the State Government may be informed and consulted; (c) Use of Article 356: This article should be used very sparingly and as a matter of last resort. It can be invoked only in the event of political crisis, internal subversion, physical breakdown, and noncompliance with the Constitutional directives of the Centre.

National Commission to Review the Committee comprising the Prime Minister, Home Minister, Speaker of the Lok Sabha, and the Chief Minister of the State concerned.

The Second Administrative Reforms Commission (ARC): The Inter-State Council needs to come up with some guidelines for governors to follow when they are using their discretionary power.

Punchhi Commission (2010): (a) It proposed giving Governors a fixed term of 5 years and removing them through an impeachment process (similar to that of the President) by the State Legislature. The doctrine of pleasure (for removal of Governors) should be deleted; (b) It reiterated the recommendation of the Sarkaria Commission regarding appointment of Governors. The person shouldn't be active in politics; (c) The convention of making the Governors as Chancellors of Universities should be done away with; (d) Article 355 and 356 should be amended to allow the Union Government to bring specific troubled

areas under its rule for a limited period, instead of the whole State.

The approach towards the Commissions: First, Multiple Commissions have provided very pragmatic recommendations regarding functioning of the Office of Governor. These recommendations should be implemented in right earnest especially those related to the appointment and removal of Governors. Second, Both the Punchhi and Sarkaria Commissions had recommended that the Governors should not be burdened with the positions and powers that were beyond their constitutional domain. This was done with the intention of shielding the high office of the Governor from needless public controversies. In addition, the Punchhi and Sarkaria Commissions both agreed that this would be in the best interest of the State. A conflict with the State Government could thus be avoided by taking such an action. Third, The Governors should also act in the best interests of the State as well as the Union. The Governor should not act as the agent of the political party in power at the Centre. The Governor should act as a link between the State and the Union Government. Fourth, The Governor's discretion and Constitutional mandate should be guided by certain 'norms and principles', which can be defined in a 'Code of Conduct'. Discretion must be a decision that is guided by reason, motivated by good faith, and tempered by caution. Fifth, Certain codification can be undertaken regarding discretionary powers as well e.g., determining the areas in which they have discretion, establishing a time frame within which they must act, and stating unequivocally that they are required to follow the advice of the Cabinet when dealing with Bills etc..

Conclusion: The recent controversies surrounding the Office of Governor and emerging issues are avoidable and unnecessary. Such controversies and emerging issues malign the dignity of the high Constitutional Office. The Union and State Governments should abide by the spirit of the Constitution as well as the Supreme Court's Judgments in this regard. The implementation of recommendations of various Commissions can ensure that such needless controversies do not arise in future. The Governors should also act according to their Constitutional mandate, rather than acting as political representatives. An active but unbiased Office of Governor can strengthen the relationship and the federal structure.

End Notes:

1) Article 153; 2) Article 167 ; 3) Article 155; 4) Article 156; 5) Article 361; 6) Article 154 ; 7) 94th Amendment Act, 2006 ; 8) Article 165; 9) Article 166 ; 10) Article 168; 11) Article 180(1) ; 12) Article 200 ; 13) Art.201; 14) Article 213 15) Article 202; 16) Article 199; 17) Article 202 ; 18) Article 161; 19) Article 233; 20) Wizard Indian Polity & Constitution; 21) *Jainath Wanchoo v The Union of India and others*, 16th April 1969; *ParshotamlalDhingra v. Union of India*, 1st November, 1957; etc.,

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