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### **Power & Role of Governor under Constitution of India**

The post of governor of a state is of immense importance in our political system. It is considered as one of the pivotal parts of “checks and balances” that our democracy is proud of. 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 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.

#### **History of origin of office of Governor in India**

- The origin of the office of the Governor in India, as we know it today, can be traced to the advent of the “East India Company” to India. The word “Governor” is historically also associated to the Portuguese “Afonso de Albuquerque” who held the position of Governor and Captain General in India in the year 1509.
- Further, with the issuance of the charter of 1601 by Queen Elizabeth –I, Governor was bestowed with the legislative powers to make, ordain and constitute such laws, orders and ordinances as required for the Governance of the East India Company.

- With the transfer of power from the East India Company to the British Crown through the Government of India Act, 1858 as enacted by the British Parliament, the Governor General of India was granted the power to issue ordinances and veto any Bill. The overriding powers of the Governor General of India with respect to legislature continued even after the enactment of the Government of India Act, 1935, which provided for a provincial executive consisting of the Governor and Council of Ministers to advise him.

- The Governor of a province was provided with 3 types of powers:

1. Discretionary
2. Powers exercised in his individual judgment and
3. Powers to be exercised on the advice of the Ministers

- With the enactment of the Indian Independence Act, 1947, India was divided into two independent dominions. Both the two Dominions were to have a Governor General each who was to be appointed by the King of England as his representative.

- Originally, the Provincial Constitution Committee of the Constituent assembly had recommended that the governor should be directly elected by the people of the state. The proposal of an elected governor was criticized on the ground that the presence of two persons in the government namely the Governor and the chief minister, each deriving his mandate from the people, might lead to friction.

- While the Constitution was being framed and discussed upon, Sardar Patel sought to make it explicit that “special powers” endowed upon the Governor would not create dissonance between him and the ministry. He stressed that there would be no “invasion of the field of ministerial responsibility”. The “special powers” would primarily be limited to sending a report to the Union President when “a grave emergency arose, threatening menace to peace and tranquility”. At one point there was also an argument put forward that the governor should be elected directly by the people of that province, but it did not find assent. Jawaharlal Nehru had

emphasized that this post could be utilized to bring distinguished people from eclectic backgrounds as well as academics into the field of public service, as they might not have necessary expertise or zest for winning an election.

### **Constitutional Provisions related to Governor**

- The appointment and powers of government can be derived from Part VI of the Indian constitution. **Article 153** says that there shall be a Governor for each State. One person can be appointed as Governor for two or more States.
- The governor acts in '**Dual Capacity**' as the Constitutional head of the state and as the representative.
- He is the part of federal system of Indian polity and acts as a bridge between union and state governments.
- **Article 157** and **Article 158** of the Constitution of India specify eligibility requirements for the post of governor. They are as follows:

### **Eligibility**

A governor must:

1. Be a citizen of India.
2. Be at least 35 years of age.
3. Not be a member of the either house of the parliament or house of the state legislature.
4. Not hold any office of profit.

**Term of governor's office is normally 5 years** but it can be terminated earlier by:

5. Dismissal by the president on the advice of the council of minister headed by the prime minister of the country.
6. Dismissal of governors without a valid reason is not permitted. However, it is the duty of the President to dismiss a governor whose acts are upheld by courts as unconstitutional and malafide.
7. Resignation by the governor.
  - **Article 163:** It talks about the discretionary power of governor.
  - **Article 256:** The executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.
  - **Article 257:** The executive power of the Union shall also extend to the giving of directions to a State as to the construction and maintenance of means of communication declared in the direction to be of national or military importance:
  - **Article 355:** It entrusts the duty upon Union to protect the states against “external aggression” and “internal disturbance” to ensure that the government of every State is carried on in accordance with the provisions of Constitution.
  - **Article 356:** In the event that a state government is unable to function according to constitutional provisions, the Central government can take direct control of the state machinery. The state's governor issues the proclamation, after obtaining the consent of the President of India.
  - **Article 357:** It deals with Exercise of legislative powers under Proclamation issued under Article 356 by the central government.

## **Role, Power and Function of Governor under Constitution of India**

- 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
- 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.
- 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
- 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 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.
- 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.

- To put it briefly, the Power of 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 co – extensive 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.
- In a 5 Judge Bench, the Supreme Court of India has held in **BP Singhal v. Union of India**<sup>1</sup> 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.
- A Governor of a State has 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 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.

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<sup>1</sup>((2010) 6 SCC 331)

- 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.
- 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.
- 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.
- 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.
- 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)<sup>2</sup>

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<sup>2</sup> (20017 SCC 231)

## **Power and Function of Governor**

The Governor of the State, like the President, is entitled to specific powers. They are-

- Legislative – affiliated with ordinance making and State Legislature;
- Executive – affiliated with administrative appointments and discharge; • Judicial – affiliated with power to grant pardons and respites;
- Financial – authority over the state budget and money bills;
- Discretionary – to be exercised at the discretion of the Governor; to, as stipulated under Article 159, preserve, protect and defend the Constitution and the law.

Unlike the President, however, the Governor does not possess any diplomatic or military powers.

### **Executive Power**

- As per Article 154, the Constitution states that the executive power of the State shall be vested in the Governor who can exercise them through directly or indirectly through subordinate officers
- The State Government undertakes all executive action in the name of the Governor
- As per Article 164, the Governor has the power to appoint the Chief Minister of the State, and upon the Chief Minister's recommendation, the appointment of other ministers.
- The Governor appoints the Advocate General of the State, State Election Commissioners and the chairman and members of the State Public Service Commission. However, the Governor cannot remove the members of the State Public Service Commission as they can only be removed by an order of the President.



- In States with bicameral legislature, the Governor can further nominate to the Legislative Council persons with special knowledge or practical experience in matters of literature, art, science, cooperative movement and social service.

### **Legislative Power**

- The Governor can summon, prorogue, defer or dissolve the State Legislative Assembly, his decisions often taken in counsel with the Chief Minister and the Council of Ministers.
- The Governor has the power to nominate 1/6th of the State Legislative Council.
- The Governor can nominate a member of the Anglo-Indian community to the Legislative Assembly of the State, if he feels the community is under-represented in Vidhan Sabha.
- As per Article 200, the Constitution confers the Governor with the power to assent, withhold assent, return for reconsideration, or reserve for President's consideration any Bill. But should the Vidhan Sabha send back a returned Bill to the Governor the second time, then he has to sign it.
- As per Article 213 the Constitution of India confers the Governor the power to promulgate an ordinance when the Legislative Assembly of the State is not in session. Notwithstanding the immediate effect of the law, it must be presented in the next session in the State Legislature, and unless approved, remains active for a six-week period.
- The Governor lays reports of State Finance Commission, State Public Service Commission and Comptroller and Auditor General relating to the account of the State in the Legislative Assembly.
- The Governor inaugurates the State Legislature, outlining new administrative policies of ruling government at the first session every year.

## **Financial Power**

- The Governor constitutes the Finance Commission to oversee financial positions of Panchayats and Municipalities, and, in the case of any unforeseen circumstances, holds the power to make advances out of the State Contingency Fund
- A prior recommendation of the Governor is necessary before the introduction of any Money Bills or Demands for Grant
- The Governor ensures that the annual financial statement or State Budget is laid before the State Legislature

## **Judicial Power**

- As per Article 161, the Governor can grant pardons, reprieves, respites or remission of punishments, or suspensions, remittances or commutes of sentences of those convicted of an offence to which the executive power of the State extends
  - The Governor is consulted by the President, as well as the Chief Justice of India, in the appointment of the Chief Justice to the High Court, judges of the High and District Courts, their postings and promotions.

## **Discretionary Power**

- The Governor may recommend an imposition of the President's Rule on the President's behalf and in such circumstances, override the Council of Ministers and directly handle the workings of the State.
- The Governor may exercise his function as the administrator of adjoining Union Territory

- The Governor holds the power to select the Chief Minister should no political party win a majority in the Vidhan Sabha of the state, or in the Chief Minister's demise without any obvious successor.

## **S.R. Bommai Judgment**

- 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.
- The Supreme Court classified the instances of failure of constitutional machinery into four heads:
  1. Political crises.
  2. Internal subversion.
  3. Physical breakdown.
  4. Non-compliance with constitutional directions of the Union Executive.
- 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.

- **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.
- **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.
- 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.
- **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.
- 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.
- **"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**.
- 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.