

Governor's Role, Controversies and Reforms

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The Left parties and the Congress have joined the Trinamool Congress in demanding the withdrawal of West Bengal Governor Jagdeep Dhankhar. They alleged the Governor was “identifying himself as a BJP man” and “The way the Centre is intervening in affairs of the State and the State government isn't right.” The Governor had written a strongly-worded letter to the Chief Minister on the post poll violence and also made the letter public, violating all established norms and disrupting the sanctity of such communications, the state government alleged. These developments have brought the focus back on the role and functions of governors in India.

In news: Left, Congress also demand withdrawal of Bengal Governor

Placing it in syllabus: Governance

Dimensions

- Vision of Constitutional Framers about the role of Governor
- Misuse of Powers with examples
- Reasons for Misuse
- Suggestions

Content:

Vision of Constitutional Framers About the Role of Governor:

- The Constitution of India provides for a parliamentary form of government in the states as well as the Centre.
- The governor has been made only a nominal executive, the real executive constitutes the council of ministers

headed by the chief minister.

- In other words, the governor has to exercise his powers and functions with the aid and advise of the council of ministers headed by the chief minister, except in matters in which he is required to act in his discretion
- The framers of the Constitution had rejected an elected Governor because they were unambiguously clear that political power would only be vested with elected executives.
- At the same time, they were not inclined to put in a formal Instrument of Instructions for the Governors and were content to believe that political decencies and correctness would be observed both by the Governor and the Chief Minister.
- As the distinguished constitutional expert, **Nani A. Palkhivala** explained it “the Constitution intended that the Governor should be the instrument to maintain the fundamental equilibrium of the people of the State and to ensure that the mandates of the Constitution are respected in the State”.
- 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”
- The Constitution thus assigns to the Governor the role of a Constitutional sentinel and that of a vital link between the Union and the State.
- The Governor, on occasions, could also play a useful role as a channel of communication between the Union and the State in regard to matters of mutual interest and responsibility.
- If any directions are issued by the Union in the exercise of its executive power to the State Government under any provision of the Constitution, such as, Articles 256 and/or 257, it will be the duty of the Governor to keep the Union informed as to how such directions are being implemented by the State

Government.

- Being the holder of an independent Constitutional office, the Governor is not a subordinate or a subservient agent of the Union Government.
- The Governor is expected to advance the cause of federalism and democracy in the contemporary constitutional landscape, which form a part of the basic structure of the constitution.

The three important facets of the Governor's role arising out of the Constitutional provisions, are:

- as the constitutional head of the State operating normally under a system of Parliamentary democracy;
- as a vital link between the Union Government and the State Government; and
- as an agent of the Union Government in a few specific areas during normal times [e.g. Article 239(2)] and in a number of areas during abnormal situations [e.g. Article 356(1)]

Discretionary Powers of the Governor:

The governor has **constitutional discretion** (i.e. the express discretion mentioned in the Constitution) in the following cases:

- Reservation of a bill for the consideration of the President.
- Recommendation for the imposition of the President's Rule in the state.
- While exercising his functions as the administrator of an adjoining union territory (in case of additional charge).
- Determining the amount payable by the Government of Assam, Meghalaya, Tripura and Mizoram to an autonomous Tribal District Council as royalty accruing from licenses for mineral exploration

- Seeking information from the chief minister with regard to the administrative and legislative matters of the state.

In addition to the above constitutional discretion the governor also has **situational discretion**, i.e. the hidden discretion derived from the exigencies of a prevailing political situation. The situational discretion is related to the following cases:

- Appointment of chief minister when no party has a clear-cut majority in the state legislative assembly or when the chief minister in office dies suddenly and there is no obvious successor.
- Dismissal of the council of ministers when it cannot prove the confidence of the state legislative assembly.
- Dissolution of the state legislative assembly if the council of ministers has lost its majority.

Misuse of Powers with examples:

Misuse of Discretionary Powers:

- As an appointee of the Union Government, the Governors have been prone to act on the instructions by the ruling party at the Centre.
- Inevitably the “discretion” in choosing a Chief Minister, or requiring a Chief Minister to prove his/her majority, or dismissing a Chief Minister, dissolving the legislature, recommending President’s Rule – came to be tainted with **partisan political considerations**.
- More often than not, the governor’s discretion was abused, sometimes absurdly, even whimsically.
- In the **S.R. Bommai case**, the Supreme Court did try through its judgment to prevent the misuse of power.
- In 1952, Madras Governor invited Congress to form government instead of UDF who had majority seats
- In 2016, when Governor of Arunachal Pradesh decided to

advance assembly elections which lead to political crisis in the state and consequent President Rule

Examples of Misuse:

- One of the more famous examples was the **dismissal of the SR Bommai (Janata Dal) government in Karnataka in 1989**. The then Governor refused to allow the democratically elected chief minister to prove his majority on the floor of the Assembly.
- **Andhra Pradesh and Goa's governors**, who dismissed the governments led by **NT Rama Rao and Wilfred D'Souza**, respectively, showed the same partisan attitude.
- **Uttar Pradesh Governor Romesh Bhandari's** actions were so blatantly partisan that he had to endure the Supreme Court's disgrace of being censored.
- The most recent one (2018) is action taken by the governor while forming a government in Karnataka. The Governor called a party to form the government, though it was not having a simple majority and gave some time to prove majority. But the Governor did not give the first preference to the other two parties with a post-poll alliance. Later this was solved with the intervention of the court.

Misuse of Article 356 (President's Rule):

- Article 356, provides for President's rule in any State and it is to be applied, when 'a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution.'
- It results in the takeover of the State government by the Union government.
- The Governor has the power to recommend the dismissal of the State government and suspension or dissolution of the State assembly. This has led to many conflicts.
- In some cases, State governments were dismissed even

when they had a majority in the legislature, as had happened in Kerala in 1959 or without testing their majority, as happened in several other States after 1967.

- Some cases went to the Supreme Court and the Court has ruled that constitutional validity of the decision to impose President's rule can be examined by the judiciary.
- Article 356 was very sparingly used till 1967. After 1967 many States had non-Congress governments and the Congress was in power at the centre.
- The centre has often used this provision to dismiss State governments or has used the office of the Governor to prevent the majority party or coalition from assuming office.
- For instance, the central government removed elected governments in Andhra Pradesh and Jammu and Kashmir in the decade of 1980s.

Important Cases Related to Governor's Power:

Bommai vs. Union of India, 1994:

- The case was about the limits to the Governor's powers in dismissing a state government under Article 356 of the Constitution
- The floor of the Assembly is the only forum that should test the majority of the government of the day, and not the subjective opinion of the Governor

Rameshwar Prasad Case, 2006:

- The Supreme Court was called upon to pronounce its verdict on the validity of the proclamation of President's Rule and the dissolution of the Assembly in Bihar in 2005.
- The SC held that the Governor could not decide based on his subjective assessments

Nabam Rebia case- Arunachal Pradesh, 2016:

- The Governor is not an elected representative, but only an executive nominee whose powers flow from the aid and advice of the Cabinet.
- Using discretionary powers to summon or dissolve Assembly sessions without the aid and advice of the Chief Minister and his Cabinet is unconstitutional

Reasons for Misuse:

- The root lies in the process of appointment itself. The post has been reduced to becoming a retirement package for politicians for being politically faithful to the government of the day.
- The Governor is not an elected office-holder. Many Governors have been retired military officers or civil servants or politicians.
- Besides, the Governor is appointed by the central government and therefore, actions of the Governor are often viewed as interference by the Central government in the functioning of the State government.
- When two different parties are in power at the centre and the State, the role of the Governor becomes even more controversial
- In most cases, Governors are unable to shed their political inclinations, predilections and prejudices while dealing with different political parties within the State.
- As a result, sometimes the decisions they take at their discretion appear as partisan and intended to promote the interests of the ruling party in the Union Government, particularly if the Governor was earlier in active politics or intends to enter politics at the end of his term.
- Such a behaviour tends to impair the system of Parliamentary democracy, detracts from the autonomy of

the States, and generates strain in Union-State relations.

Suggestions:

A wide spectrum of suggestions in regard to various aspects of the institution and role of the

Governor have been made by various commissions.

Recommendations of Sarkaria Commission (1988):

The Sarkaria commission made the following recommendations regarding the appointment of the Governor:

- should be an eminent person;
- must be a person from outside the State;
- must not have participated in active politics at least for some time before his appointment; it even suggested that when the state and the center are ruled by different political parties, the governor should not belong to the ruling party at the center.
- he should be a detached person and not too intimately connected with the local politics of the State;
- he should be appointed in consultation with the Chief Minister of the State, Vice-President of India and the Speaker of the Lok Sabha;
- It even recommended that the State Government should be given prominence in appointing the Governor.
- His tenure of office must be guaranteed.
- After demitting his office, the person appointed as Governor should not be eligible for any other appointment or office of profit under the Union or a State Government except for a second term as Governor or election as Vice-President or President of India, as the case may be;
- At the end of his tenure, reasonable post-retirement benefits should be provided

Governor should appoint CM based on following principles:

- Leader of the majority party or parties,
- Should seek the vote of confidence in the assembly within 30 days of his appointment as the CM.
- As long as the council of ministry possess a majority in the assembly the governor cannot use his discretionary powers.

Recommendations of M.M Punchhi Commission (2010):

Following are the Punchhi commissions recommendations on Governor:

- Like the Sarkaria commission, it also recommended that the person who is slated to be a Governor should not have participated in active politics.
- It recommended that the state chief minister should have a say in the appointment of the governor.
- It also recommended that Appointment of the governor should be entrusted to a committee comprising the Prime Minister, Home Minister, Speaker of the Lok Sabha and chief minister of the concerned state. The Vice-President can also be involved in the process.
- The commission recommended that the doctrine of pleasure should end and should be deleted from the constitution.
- It recommended that the Governor should not be removed at the whim of the central government. Instead, a resolution by the state legislature should be there to remove the Governor.

The SC has many times emphasized the urgent need for implementing Sarkaria commission's recommendations on selection and appointment of governors. In light of this, proper implementation of these recommendations would help in protecting the sanctity of the office of the Governor.

Mould your thought: Why has the office of governor of the

state been often mired in controversies? Suggest measures to prevent such controversies in the future.

Approach to the answer:

- Introduction
- Briefly mention the 3 roles of the Governor as per Constitution
- Mention the misuse of powers and the reasons for it
- Discuss the recommendations of the Sarkaria and Puchhi Commissions
- Conclusion