

# Office of the Governor and its misuse

April 18, 2019

## Manifest Pedagogy

Institutions and their integrity in a political democracy is a topic of significance for UPSC. Whenever an institution doesn't uphold the neutrality and integrity expected of it by the constitution it becomes a matter of debate and usually, the Supreme court intervenes to correct it. This makes a good constitutional debate which can be formulated into a good question in UPSC. Particularly in an year of the election when most of the institutions are coming under enormous stress, this becomes very important.

## In news

Political endorsement by Governor

## Placing it in the syllabus

Appointment to various Constitutional posts, powers, functions and responsibilities of various

Constitutional Bodies.

## Static dimensions

- Role of governor according to the constitution
- Misuse of office
- Supreme Court decisions

## Current dimensions

- About the recent issue

- Solutions

## Content

### Role of governor according to the constitution

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

Following are the **role/ functions of The Governor mentioned in the constitution;**

- According to article 154 of the constitution, the executive power of the state shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with the Constitution of India.
- Article 161 states that The Governor shall have the power to grant pardons, reprieves, etc.
- According to article 163, There shall be a council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions except in so far as he is by or under the Constitution required to exercise his functions or any of them in his discretion.
- Article 164 mentions that it is the Chief Ministers and other ministers are appointed by him.
- Article 165 states that the Advocate General of the State is appointed by Governor.
- Article 166 states that all executive actions, of the Governor of a State shall be expressed to be taken in the name of Governor.
- Article 174 mentions that the Governor shall from time to time summon and prorogue the House and dissolve the Legislative Assembly.
- Article 175 mentions that The Governor may address the

Legislative Assembly; The Governor may send messages to the House.

- Article 176 mentions that Special Address to the House by the Governor.
- According to article 200, the Governor assents, withholds assent or reserves for the consideration of the Bill passed by the Legislative Assembly.
- Article 202 mentions that the Governor shall in respect of every financial year cause to be laid before the House a statement of the estimated receipts and expenditure.
- According to article 203, No demand for a grant shall be made except on the recommendation of the Governor.
- According to article 213, The Governor may promulgate the ordinances under certain circumstances.
- Article 217 mentions that The Governor is consulted for appointment of Judges of High Court.
- 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.

### **Misuse of office by Governors**

There have been numerous instances of the powers vested in the Governor being misused usually at the behest of the ruling party at the Centre. **Following are some of them;**

- 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.
- 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 censured.
- The most recent one(2018) is action taken by the governor while forming a government in Karnataka, 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 other two parties with a post-poll alliance. Later this has been solved with the intervention of the court.

### **Supreme Court decisions**

- In **Hargovind Pant v. Raghukul Tilak (1979)**, the Supreme Court affirmed that the "office of the Governor was not subordinate or subservient to the Government of India".
- In **S.R. Bommai vs Union of India case (1994)**, the Supreme Court said, "The office of the Governor is intended to ensure protection and sustenance of the constitutional process of the working of the Constitution by the elected executive."
- One must consider the Supreme Court's verdict in **B.P. Singhal v. Union of India** on the interpretation of Article 156 of the Constitution and the arbitrary removal of Governors before the expiration of their tenure. This judgment is crucial as a fixed tenure for Governors could go quite a long way in promoting neutrality and fairness in fulfilling their duties, unmindful of the dispensation at the Centre.
- **The five-judge Constitution Bench of the Supreme Court** led by then Chief Justice J.S. Khehar in the **Nabam Rebia judgment of 2016** ruled that Article 163 does not give Governors a "general discretionary power" as is often misunderstood. "The area for the exercise of his

(Governor) discretion is limited. Even this limited area, 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 Constitution Bench, of which the current Chief Justice Dipak Misra was a part of, held.

- **In Government of NCT of Delhi v. Union of India case(2018)**, then Chief Justice of India, Dipak Misra, clarified that democracy and federalism are firmly imbibed in India's constitutional ethos while reiterating that democracy requires the constant affirmation of constitutional morality.

### **What was the issue?**

Rajasthan Governor, Kalayan Singh recently commented that as a Party worker he wants the

Bharatiya Janata Party(BJP) to win in the Loksabha elections. He also said that it is important for nation and society that Narendra Modi should become Prime minister of India again. This political endorsement by the governor is detrimental to the sanctity of Governor's office. This also reignited the debate on the independence and neutrality of the constitutional post.

### **Solutions – Sarkaria and Punchi commission recommendations**

#### **Recommendations of Sarkaria commission**

Following are the Sarkaria commission's recommendations on Governor

- Recommendations regarding the appointment of the Governor:
  1. should be an eminent person;
  2. must be a person from outside the State;
  3. 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.

4. he should be a detached person and not too intimately connected with the local politics of the State;
5. he should be appointed in consultation with the Chief Minister of the State, Vice-President of India and the Speaker of the Lok Sabha;
6. It even recommended that the State Government should be given prominence in appointing the Governor.
7. His tenure of office must be guaranteed.
8. 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;
9. At the end of his tenure, reasonable post-retirement benefits should be provided

### **Recommendations of M.M Punchi commission**

Following are the Punchi commissions recommendations on Governor:

1. Like Sarkaria commission, it also recommended that the person who is slated to be a Governor should not have participated in active politics.
2. It recommended that state chief minister should have a say in the appointment of the governor.
3. 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.
4. The commission recommended that the doctrine of pleasure should end and should be deleted from the constitution.

5. It recommended that the Governor should not be removed at the whim of the central government. Instead, a resolution by state legislature should be there to remove 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.