

Tussle over role of the Governor in recent times

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Manifest Pedagogy:

For the constitutional democracy to function well, the governor's position is essential. He must avoid identifying with any political philosophy. To guarantee a free and fair election in a democracy, the virtue of impartiality must be withheld. This will significantly reduce the likelihood that state governments would be overthrown on flimsy and fabricated grounds of lawlessness which is very essential to uphold the true spirit of federalism.

In News: The West Bengal Assembly passed a Bill paving the way for making the Chief Minister the Chancellor of universities run by the state government, replacing the Governor from the position.

This move by the West Bengal government has once again brought to the fore similar disputes playing out in Opposition-ruled states such as Tamil Nadu and Maharashtra, which too have curtailed the authority enjoyed by Governors as Chancellors.

Placing it in Syllabus: Polity

Statics Dimensions

- Constitutional Provisions related to Governor
- How is the Governor related to the States?
- What are the discretionary powers of the Governor?

Current Dimensions

- Issues related with the position of Governor
- What are the current tussles between the Governor and

Chief Minister?

- Various Committee recommendations
- Way Forward

Content

The governor is the chief executive head of the state. He is a nominal executive head and also acts as an agent of the central government. In recent times, the Governor is being criticized for being a puppet of the central government and acting as an agent of the Centre rather than being the constitutional head of state.

Constitutional Provisions related to Governor-

- **Article 153** : There shall be a Governor for each State. One person can be appointed as Governor for two or more States.
- **Article 154**: 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 155**: The Governor of a State shall be appointed by the President by warrant under his hand and seal.
- **Article 157**: A person to be eligible for appointment as Governor should be citizen of India and has completed age of 35 years.
- **Article 158**: The Governor shall not be a member of the Legislature or Parliament; shall not hold any office of profit, shall be entitled to emoluments and allowances.
- **Article 161**: Governor has the power to grant pardons, reprieves, etc.
- **Article 163**: There is a CoM with the CM at the head to aid and advise the Governor in the exercise of his functions, except some conditions for discretion.
- **Article 164**: Governor appoints the Chief Minister and other Ministers
- **Article 200**: Governor assents, withholds assent, or

reserves the bill for the consideration of the President passed by the Legislative Assembly.

- **Article 213:** Governor may promulgate the Ordinances under certain circumstances

How is the Governor related to the States?

- The governor acts as the nominal head whereas the real power lies with the Chief Minister of the state.
- While the President of India is “elected”, the governor is “selected” by the incumbent central government.
- The Governor is the constitutional head of the state as well as the vital link between the Union and State government.

What are the discretionary powers of the Governor?

- 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 the discretion granted by the Constitution.
- If any question arises whether a matter is within the Governor’s discretion or not, the Governor’s decision shall be final.
- The discretionary power of the Governor is wider than that of the President as he enjoys both the constitutional as well as situational discretionary power unlike the President who enjoys only situational discretion.
- Constitutional discretionary powers-
 - **Article 167-** The Governor can seek information from the chief minister about state administrative and legislative matters.
 - **Article 200**– The Governor can reserve a Bill for President’s consideration.
 - **Article 356**– The Governor can recommend the President to impose President’s rule on

failure of constitutional machinery.

- The Governor is not bound to act on the aid and advice of the CM and council of ministers while performing his duties as the administrator of a neighboring union territory (in case of additional charge).
- **Sixth schedule**– The Governor may determine the amount payable to an autonomous Tribal District Council as royalty from mineral exploration licenses by the governments of Sixth Schedule areas (Assam, Meghalaya, Tripura, and Mizoram)
- **Situational discretionary powers**
 - During the Hung Assembly- The Governor can appoint the chief minister when no party has a clear-cut majority.
 - No-confidence- The Governor can dismiss the council of ministers when it cannot prove the confidence of the state legislative assembly.
 - The Governor can dissolve the state legislative assembly when the council of ministers lose their majority.
 - Appointment of caretaker government- The Governor can appoint the caretaker government for a temporary period until a regular government is elected or formed.
 - Special provisions with respect to States- The President may provide special responsibility for the Governor to form separate development boards for Vidarbha, Marathwada, Saurashtra and Kutch, as per Article 371.

Issues related with the position of Governor-

- Present controversies have been around the issues of **selecting the chief minister.**
- Determining the timing for proving legislative majority.

- Taking apparently a long time in giving assent to bills or reserving bills for the President.
- **Misuse of Article 356:** A Governor's recommendation for President's Rule (Article 356) in a state has not always been based on 'objective material', but on political whim or fancy. This power has been abused by political parties in power at Centre to dismiss governments in states governed by parties in opposition.
- **Commenting adversely** on specific policies of the state government.
- Exercising powers of the governor as the **chancellor of state universities**.
- **Abuse of Power by the Centre:** There are numerous examples of the Governor's position being abused, usually at the behest of the ruling party at the Centre.
- The process of appointment of Governor has generally been controversial.
- **Biased Ideology:** In several cases, politicians and former bureaucrats identifying with a particular political ideology have been appointed as the Governors by the Central government. This goes against the constitutionally mandated neutral seat and has resulted in bias.
- **Puppet Rulers:** Recently, the Governor of Rajasthan had been charged with the violation of the model code of conduct. His support of the central ruling party is against the spirit of non-partisanship that is expected from the person sitting on constitutional posts.
- **Favoring a Particular Political Party:** Governor's discretionary powers to invite the leader of the largest party/alliance, post-election, to form the government has often been misused to favor a particular political party.
- **Partisan role in Hung assemblies:** In case of hung assemblies, there is discretion for Governors as to which party or coalition of parties are in best position to form the government. This discretion is abused by

Governors in a partisan manner at the instruction of the Centre.

- There are numerous instances where despite the parties apparently having fewer seats than the parties in opposition are invited to form government. E.g. Recently, the Governor invited BJP for forming government in Karnataka despite opposition coalition claiming majority.

What are the current tussles between the Governor and Chief Minister?

- **West Bengal**- The Governor Dhankhar has been accused of withholding assent to the Howrah Municipal Corporation (Amendment) Bill 2021, delaying polls to the civic body. He has made allegations of impropriety in welfare schemes and has questioned the Government claims about investments in the State.
- **Maharashtra**- Governor Bhagat Singh Koshyari has stalled the election of Speaker since the post fell vacant in February 2021. The Governor's view that the State Assembly cannot decide its own rules is unacceptable to the ruling coalition. He had refused to accept the recommendation of the Council of Ministers on the nomination of 12 members to the Legislative Council, until the matter reached the High Court.
- **Tamil Nadu**- Governor R.N. Ravi did not act upon the T.N. Admission to Undergraduate Medical Degree Courses Bill, adopted by the Assembly in September 2021. The Governor is required to either send it to the President of India for approval or return it for reconsideration by the Assembly, but the indefinite delay in taking a decision is undermining the legislature.

Various recommendations related to the role of Governor-

- **The Administrative Reforms Commission (1968)**

President's rule- It 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.

- **Rajamannar Committee (1971)**

Role of Governor- It stressed 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.

- **Sarkaria Commission recommendations- (1983)**

Hung assembly- It provided the order of preference the Governor should follow in selecting a CM in such a situation

- An alliance of parties that was formed prior to the elections.
- The single largest party staking a claim to form the government with the support of others, including independents.
- A post-electoral coalition of parties, with all the partners in the coalition joining the government.
- A post-electoral alliance of parties, with some of the parties in the alliance forming a government and the remaining parties, including independents, supporting the government from outside.

Appointment of Governor- CM should be consulted in the Governor's appointment.

Dismissal of Council of Ministers- The Governor cannot dismiss the Council of ministers when it commands a majority.

- **S.R. Bommai Judgment (1994)**

President's rule- The Supreme Court classified the instances of failure of constitutional machinery into four heads- Political crises, Internal subversion, Physical breakdown, Non-compliance with constitutional directions of the Union Executive. The verdict allows the Supreme Court to investigate

claims of malafide in the Governor's report.

- **Punchhi Commission recommendations (2007)**

It said that the governor should invite the leader of "a pre-poll alliance commanding the largest number" or the "largest single party" to form the government in case no party or pre-poll coalition has a clear majority.

Way Forward

It is equally important for the governor to act wisely, impartially, and effectively while using his discretion and personal judgement in order for the government to run smoothly. The Inter-state Council, not the federal government, should have the actual power to nominate governors, not a panel assembled by the state legislature.

The Code of Conduct for the Governor should provide some "norms and standards" that the governor is allowed to utilise and exercise on his judgement while using his "discretion" and his powers. India's federal system needs to be strengthened in order to prevent abuse of the governor's office. The Inter-State council and Rajya Sabha's function as the federalism chamber need to be strengthened in this regard.

Mould Your Thoughts-

1. When compared to being the "constitutional head of state," has the governor been operating more like a "agent of the centre". In view of recent controversy, critically analyse the position of Governor.

Approach to the answer-

- Contextual Introduction
- Discuss how the Governor is acting as an agent of the centre in recent times.
- Mention the importance of the governor as constitutional head.

- Conclude by giving suggestions.