

## **STATUS OF THE GOVERNOR UNDER INDIAN CONSTITUTION**

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### **INTRODUCTION**

There are three main organs in the Government machinery of any state namely- Executive, Legislative and Judiciary. Executive Powers of the Union has vested in President and Executive Powers of the each State has vested in the Governor. Our Constitution is a federal Constitution, which provides for the division of powers between the Union and State Government. **Prof. Wheare**<sup>1</sup>, observes about federal principle, the federal principles is the method of dividing powers, so that the Central and State Governments each are Co-ordinate and Independent in their sphere, but not sub-ordinate to each other.

The System of the Government in the State is as same as the Union, that is a 'Parliamentary System'. The Executive Head is Constitutional Head, who is to act according to the advice of the Council of Ministers. Our Constitution creates the office of the Governor as per the Article 153. Thus, each State shall have a 'Governor'. However, one person can be appointed as a Governor for two or more states. He shall exercise the Executive Power either directly or through office sub-ordinate to him.

Constitution says that, the Governor is the head of a state and appointed by the President of India under Article 156(1). He/She holds office during the pleasure of the President. In 1979, the Supreme Court in the case of **Hargovind Pant vs. Dr. Raghukul Tilak**<sup>2</sup>, observed that it is no doubt that the Governor is appointed by the President, which means Governor is not an employment under the Government of India and it does not come within the prohibition of Article 319 clause (d). his office is not sub-ordinate or sub-servient to the government of India. He is not a manual to the direction of the government of the India, nor is he accountable to them for the manner in which he carried out his functions and duties.

The office of the Governor is an independent constitutional office and is not subject to the control of the Government of India.

1. K.C. Wheare, Federal Government P27.
2. On 4<sup>th</sup> May, 1979. Citation – 1979 AIR 1109, 1979 SCR(3) 972.

There is also one highly significant role which he has to play under the Constitution, that is of making a report where he finds that a situation has arisen in which the government of state cannot be carried on in accordance with the provisions of the Constitution.

It is the Governor's report which generally forms the basis of the president for taking action under Article 356 of the Constitution. It will be seen from this enumeration of the Constitutional powers and functions of the Governor that he is not an employee or servant in any sense of terms. It is only a mode of appointment and it does not make the Governor an employee or servant of the government of India.

The office of the Governor is of crucial importance. The Constitution casts upon the Governors' the responsibilities for preserving, protection and defending the Constitution and devoting himself to the service and well-being of the people of the state. The Governor's appointment, his power and everything related to the office of Governor have been discussed under Article 153-162 of the Indian Constitution. The Constitution of India created the office of the Governor by Article 153. The Governor of a state is appointed by the president of the India on the advice of the Prime Minister and the Council of Minister by Article 155. He is neither elected by the direct vote of the people nor by an indirect vote by a specially constituted electoral college as in the case of the president. The role of Governor is quite similar to that of the President of India. The Governor performs the same duty as of President, but for the State. Governor's stands as executive head of a State and the working remains the same as of the office of President of India. Under the Constitution of India, the Governing machinery is the same as that of the central government. It is stated that the Governor has a dual role:-

- He is Constitutional head of the State, bound by the advice of his council of Minister.
- He Functions as a vital link between the Union and the State Government.
- According to the Article 156 of the constitution, the Governor shall hold office at the pleasure of the President and subject to this provision his term of office is for five years.

### **CONSTITUTIONAL PROVISIONS RELATED TO THE 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 a Governor for two or more State.
- The Governor acts in dual capacity as the constitutional head of the State and as the representatives of Central.
- He is the part of federal system of Indian Polity and acts as a bridge between Union and State Government.
- The governor shall not be a member of either house of parliament or of a house of the legislature of any state (specified in the first schedule), and if a member of either house of parliament or of a house of the legislature of any such state be appointed Governor, he shall be deemed to have vacated his seat in that house on the date on which he enters upon his office as Governor.
- A Governor must:-
  - Be a citizen of India.
  - Be at least 35 years of age.
  - Not be a member of the either of the houses of the Parliament or House of the State Legislature.
  - Not hold any office of profit.
  - The Governor shall be entitled without payment of rent to the use of his official residence and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament.

### **POWER OF THE GOVERNOR**

- Power of the Governors can be broadly classified into- Executive, Legislative, Financial and Judicial power.
  - Executive Powers – Executive Power of the State Executive is co-extensive with that of the state legislature. The Executive Power of the state shall be vested in the Governor. All Executive action of the Government of a state shall be expressed to be taken in the name of the Governor directly or through the officers sub-ordinate to him, Ministers and heads of various Departments of the state; which is Law and Order, Finance, Irrigation, Commercial Taxes, Education etc.
  - Legislative Powers – Under Article 168 of the constitution confers on the Governor of a state, the legislature or Law making power. For every state there shall be a legislature which shall consist of a Governor and in the state

of Andhra Pradesh, Bihar, Maharashtra, Karnataka, Tamil Nadu, Telangana and Uttar Pradesh have two Houses except these states, there have only one House. The most Important Legislative Power of the Governor is his Ordinance Making Power.

Under Article 213, whenever the Legislative assembly is not in session and if the Governor is Satisfied that circumstances exist which require him to take immediate action he may legislate by ordinance.

The ordinance shall be laid before the Legislative Assembly or where there is a Legislative Council in the State, before both houses and, shall cease to operate at the expiration of six weeks from the reassembly of the Legislature. The Ordinance may be withdrawn at any time by the Governor.

The Governor cannot issue an ordinance without the instructions from the President under the following cases:-

- a. If a bill containing the same provisions would have required the previous sanctions of the President for its introduction into the Legislature.
  - b. If he would have deemed it necessary to reserve a bill containing the same provisions would have been invalid unless having been reserved for the consideration of the President.
  - c. If an Act of legislature of the State containing the same provisions would have been invalid unless having been reserved for the consideration of the President it had received the assent of the President.
- Financial Powers – A Money Bill cannot be introduced in the Legislative Assembly of the State without the recommendations of the Governor. No demand of grants can be made except on the recommendations of the Governor. The Governor is required to cause to be laid before the House of the Legislature annual financial Statements, known as Budget( Article 202 ). A bill, which, is enacted and brought into operation, would involves expenditures from the Consolidated Fund of a State which cannot be passed by a House of the State Legislature, unless the Governor has recommended to the house the consideration of the Bill.
- The Governor has the contingency fund of the State at his disposal for emergencies.
- Subjects to limits, if any, fixed by the legislature, the Governor can borrow money on the security of the Consolidated Fund of the State and guarantee the loan of any other local authorities.
- Judicial Powers:- The Governor appoints the District Judges and other Judges of the Subordinate Courts in the State. The Governor is consulted by the

President in the appointment of the Chief Justice and the Judges of the High Court.

- Though the Governor has the power to pardon, he cannot pardon a death sentence.
  - Powers to grant Pardons:- The term 'Pardon' is an act of grace, which cannot be claimed/demanded as a matter of rights. Article 161 of the Constitution confers on Governor, the power to grant pardons, reprieves, respites or remission of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to the matters to which the executive powers of the State extends.  
It is to be noted that the pardoning powers of the Governor of any State is subject to judicial review.

#### CASE LAW:-

- In **K.M Nanawati v. State of Bombay**<sup>3</sup>:- the Supreme Court has held that the power of the Governor to Suspend sentence under Article 161 is subject to the rules made by the Supreme Court with the respect to only those cases which are pending before it in appeal. It is open to the Governor to grant a full pardon at any time even during the pendency of the case in the Supreme Court, but the Governor cannot exercise his power of the suspension of the sentence for the period when the Supreme Court is seized of the case.
- In **Swaran Singh v. State of U.P**<sup>4</sup>:- it has been observed that if the order is passed by the Governor under Article 161 without being appraised of material facts, the order would be arbitrary and the Court is not precluded from Article 161 is exercised arbitrarily, mala fide or in absolute byproduct order cannot get the approval of law and in such cases the judicial hand must be stretched to it.
- In **Satpal v. State of Haryana**<sup>5</sup> – it has been observed that the power of granting pardon under Article 161 is very wide and do not contain any limitation as to in which the said power could be exercised. But the said power being a constitutional power is amenable to judicial review on certain limited grounds. The Court, therefore, would be justified in interfering with an order passed by the Governor in exercise of power under Article 161 of the Constitution. If the Governor is found to have exercised the power himself without being advised by the Government or if the Governor

transgresses the jurisdiction in exercising the same or it is established that the Governor has passed the order without application of mind or the order in question is a mala fide one or the Governor has passed the order on some extraneous consideration.

- When the Governor reserves the Bill for the consideration of the President (only president assent would be needed then).
- The President is not bound to give his assent to a State Bill reserved by the Governor for the consideration of the President and he can return the Bill to the houses for reconsideration infinite times.

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3. AIR 1961 SC 99.
  4. AIR 1998 SC 2026.
  5. AIR 2000 SC 1702.

### **REMOVAL OF GOVERNOR BY CENTRAL**

(His term of office is for five years but it can be terminated earlier by these dates.)

- Dismissal by the President on the Advice of the Council of Minister headed by the Prime Minister of the Country.
- Dismissal of Governor cannot be without a valid reason.
- 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, or on the ground that The Union Government has lost confidence in him. Remember that the Governor is not an employee of the Centre. It follows, that a mere change in Government and the centre is not a ground per se for removal of Governors holding to office to make way for others favoured by new Government.
- This approving the practice of replacing Governors after a new Government comes to power at the Centre, the Supreme Court in 2010 had said that the governors of State cannot be changed in an arbitrary and capricious manner with the change of power. A five judge Constitution bench headed by Chief Justice K.G. Bala Krishnan held that a Governor can be replaced only under compelling reasons for proven misconduct or other irregularities. The bench also said that the Governor can be

removed only under compelling reasons. The compelling reasons are depended on the facts and situations of a particular case.

- The landmark decision came on a PIL filed was in 2004 by then BJP MP, BP Singhal challenging the removal of Governors of Uttar Pradesh, Gujarat, Haryana and Orissa by the previous UPA Government.

### ISSUE

- The constitution contains specific provisions for removal of the president, the Chief justice of Supreme Court and his companion judges, the Chief Justice of state, High Court and other Judges, the Chief Election Commissioner and Comptroller and Auditor General of India. There are also provision for the removal of the Vice-President, the Speaker and the Deputy-Speaker of the Lok Sabha, the Deputy Chairman of the Rajya Sabha and presiding officer of the State Legislatures. But there is no specific provision for removal of Governor from the office or for their impeachment, for violation of the constitution. But Governor may be removed from his office at any time by the President.
- 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 has generally been the cause behind him.
- In several cases, Politicians and former bureaucrats identifying with a particular political ideology have been appointed as the Governors by the Government. This goes against the Constitutional mandated and neutral sheet and has resulted in bias, as appears to have happened in Karnataka and Goa.
- Due to such incidents, negative terms like an agent of the Centre, puppet and rubber stamps are used to describe a Governor of the State.

The President acts on the advice of the Cabinet. The Governor may, however resign his office by writing to the President. The President pleasure is unjustifiable. It is not regulated or controlled by the procedure laid down in Article 311. The doctrine of pleasure is subject to the Fundamental Rights. These facts have been decided by Apex Court in the case of **Union of India vs. P.D. More**<sup>6</sup>.

No such person shall be dismissed, removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in request of those charges but, it procedure are not regulate in respect of dismissal of Governor.

The arbitrary removal of the Governor before the expiration of his tenure has also been an important one in the recent past. The Governor cannot be removed on the ground of 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.

The head of the Drafting Committee of Constitution, Dr. B.R. Ambedkar supported impeachment of Governor for violation of the Constitution.

“A Governor may for violation of the constitution be removed from office by impeachment in the manner provided in Article 137 of the Constitution.” But, which was subsequently deleted by an amendment adopted on 1<sup>st</sup> June, 1949 because initially there was a suggestion that Governor should be elected by the people of the State or by the members of the Assembly.

**Mr. Loknath Mishra**<sup>7</sup>, pleaded for impeachment of Governor and said “If the position for the impeachment of the Governor by the state Legislatures had been given the power, it would have been a safeguard against the improper appointment of the Governor by the President”.

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6. AIR 1962 SC 630.

7. Then he was the Governor of the Assam, Participating in the debate in Constituent Assembly on May 31<sup>st</sup>, 1949.

It would have been much better if the Governor's removal have been made dependent not only on the displeasure of the President but on the displeasure of the state legislature also which represents the people and that would have been a safeguard against the evil that has been caused by the provision for appointment of Governor's by the President.

**B.G.Kher**<sup>8</sup>, who became the premier of Bombay, told in the Constituent Assembly that, “so far as the Governor is concerned, we have given him few powers. But, I do not agree with the comment that he is a mere figurehead. A figurehead is capable neither of good nor of bad that a Governor can do a great deal of good, if he is a good Governor and he can do a great mischief, if he is bad Governor, in spite of the very little power given to him under the Constitution we are now framing.”

The huge crisis in the 1989 about dismissal of Governors by National Front Government headed by Mr. V.P. Singh has dismissed all the States Governors appointed by the Congress 1 Government. It was argued that the previous Congress Government has made political appointment of Governors which was not proper and the present Government was committed to remove Corruption from the public life. It was also argued that with the change of the Government at the centre of the Governors should also be changed in order to give the Government an opportunity to tone up the Administration. These Arguments are not at all reasonable. The Governors are not the agents of the centre. There are discretionary powers given to them by the Constitution and its exercise of these powers time to time without consent of President or state Chief Minister because the Governor is representatives of the President in the State as the protector of the Constitution.

The office of Governor is more required to the State than to the Centre. So in the matter of the appointment and dismissal, the consent of the State Concern is essential.

The Governor, being a constitutional functionary, appoints the Chief Minister of the State and other Minister on the latter's advice; all the orders of the State government are issued in the name of the Governor; the legislature is summoned from time to time and prorogued or dissolved only by the Governor; he has the right to address the Legislature and send messages to it; his assent to Bills is a pre-requisite to make them laws and he has power to grant pardon, reprieve, respite or remission of sentence of any convicted person. Admittedly the Governor exercises such powers only with the aid and advice of the Council of Ministers. But the facts remains that the Council of Minister has to function only through the office of the Governor.

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8. On May 30<sup>TH</sup>, 1949.

In 1989, the National Front Government has not followed the norms laid down by the Sarkaria Commission.

When the Congress party came into power at the centre in 1991. The position and the status of the office of the Governor was further devalued. The congress party which had at that time criticized the action of Mr. V.P. Singh Government did the same thing Mr. Narshima Rao Government changed at least 14 Governors appointed by the National Front Government. This act was done merely to devalue the institution of the Governors. Delhi,

M.P., H.P. and Rajasthan were clear example that office of the Governor was used for political purpose time to time. The Sarkaria Committee's Report was ignored by the various parties which make Government in Central.

## **CONCLUSION**

- For the smooth functioning of a democratic Government it is equally important the Governor must act judiciously, impartially and efficiently while exercising his discretion and personal judgments.
- The 'procedure for appointment of the Governor's should be clearly laid down' and conditions of appointment must also be laid down and must assure a fixed tenure for the Governor so that the Governor is not under the constant threat of removal by the Central Government.
- It is necessary to invest the office of the governor with the requisite independence of action and to rid them of the ban of 'instructions' from the Central Government.
- The role of Governor is indispensable for the successful working of the Constitutional Democracy. He must refrain from aligning himself to any political ideologies. The virtue of impartiality must be with held to ensure a free and fair election in a democracy.

The Governor of a State is not just a figurehead. He can practice a few powers in his prudence and free of the suggestions made by the State Chief Minister. Governor is anything but a pointless height. The Governor goes about as the connections between the Union and the State thus the Governor should not do partiality about on duties fixed by the Constitutional Norms. Although all parties promised for reform in this regard but when they come in power they in their term visualize the role of Governors as the agent of the Central Government. Unless all political party seriously decides to improve the position in this regard the office of the Governor would be reduced bureaucratic norms.

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