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Role of Governor and Constitution of India

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ABSTRACT

The governor serves as the state's chief executive. The Governor's role and the President of India's are very similar. In place of the President, the Governor is responsible for the State. A governor serves as the state's executive head, and their duties are the same as those of the president of India. According to the Indian Constitution, the system of government is identical to that of the Central Government. He serves as the notional executive leader and a representative of the national government. In contrast to being the head of state as defined by the constitution, the governor has recently come under fire for functioning as the centre's puppet and agent. There is different committee recommendation related to the governor. Apex court plays an important role whenever there is a dispute between the governor and chief minister of state. The purpose of this paper is to analyse the role of the governor, power, duties and the latest controversies between the governor and chief minister.

Keywords: Governor, Power and duties, committee's recommendation, conflict, Supreme Court.

I. BACKGROUND

“The Government of India Act of 1935” served as the basis for the majority of the provisions included in the Indian Constitution. As a result, the Governors were "by the Raj, of the Raj, and for the Raj" under this Act. The members of the subcommittee, “B.G. Kher, K.N. Katju, and P. Subbarayan”, suggested the members of the Constituent Assembly. Since then, conflicts between the Chief Minister's and Governor's authority have arisen, leading to the establishment of the system of appointed governors for each state.

Every state in India has a governor, according to the Indian Constitution. According to Article 153, there must be a governor for each state. The 7th Constitutional Amendment Act of 1956 made it possible for the same individual to be appointed as governor of two or more states under particular circumstances. The Governor is the state's top executive. However, like the President of India, he only has nominal or titular authority. On the other hand, the Governor also represents the Central Government, which implies that his position has a dual function.²

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²Basu, D.D. (2013) (24th edition), Introduction to the Constitution of India, Lexis Nexis, Chennai”.

How is a governor chosen?

Each state's governor is appointed by the Indian President via a warrant that bears his signature. Each state's governor must be chosen by the central government.

Note: Unlike presidential elections, there isn't a direct or indirect election for governor.

- The position of governor is an autonomous constitutional office that is not a part of the union administration. The governor does not work for or report to the union government.
- The Indian government is structured similarly to Canada's model, with the Union nominating a governor and the President appointing him.

II. GOVERNOR'S TERM IN OFFICE

The Governor's post has no set term since he serves at the President's appointment. The reasons for removing the governor are not specified in the constitution, and the President has the authority to do so.

- The President may also transfer a governor from one state to another. He is also subject to reappointment.
- There cannot be an interregnum but, once the term has expired, a governor may continue to serve in the position for a further five years until a new governor takes over.
- “The Chief Justice of the High Court of the relevant state may, at the President's discretion, be appointed as the Governor on a temporary basis whenever and wherever the President sees fit. (For instance, the Chief Justice of the HC may be named governor in the event of the death of the governor”.)

III. ELIGIBILITY TO RUN FOR GOVERNOR

Unlike members of the “Lok Sabha or Rajya Sabha, or even the Prime Minister or President”, who must meet a number of requirements to hold office, the Governor only has to meet two:

1. He needs to be a citizen of India.
2. He should be over the age of 35.

Before putting forward a candidate for governor, the government must follow the following two rules:

1. That individual was not chosen to serve as the state's governor. He must be an outsider with no connection to the state to which he is being appointed.
2. Before selecting a governor, the President consults with the Chief Minister.

It should be emphasised that none of the aforementioned norms are infallible and have often been disregarded by the union administration.

What circumstances exist at his office?

A person must meet the following requirements in order to be named governor:

1. He is not eligible to serve in both the Lok Sabha and the Rajya Sabha. On his first day as governor, he must give up his position if he has previously served in either house.
2. He shouldn't have any lucrative positions.
3. He is given Raj Bhavan as his place of abode without having to pay rent.
4. His emoluments, allowances, and privileges are decided by Parliament.
5. When a governor is in charge of two or more states, the states split the emoluments and allowances owed to him in accordance with the President's discretion.
6. During his tenure as president, Parliament cannot reduce his compensation and benefits.
7. He is shielded from criminal prosecution, including for his own actions.
8. The Governor cannot be arrested or detained. For his own actions, only civil procedures may be brought, and only after two months' notice.³

IV. THE GOVERNOR'S CONSTITUTIONAL POSITION

The Constitutional Position of the governor can be understood by the following articles⁴:

Constitutional Position of the Governor	
“Article	Provision”
“Article 154”	“He is the executive head of the state. All the executive functions will be performed by him or by the officers subordinate to him in accordance with the Constitution”

³ibid

⁴<https://haryanarajbhavan.gov.in/roles-and-power-of-the-governor>.

<p>“Article 163”</p>	<p>“He will be aided and advised by the Chief Minister and Council of Ministers unless he is performing a function at his discretion”</p> <p>Note:</p> <ul style="list-style-type: none"> • “The power to act at his own discretion is a power that is not given to the President. • 42nd Amendment Act made the advice of the Council of Ministers’ binding on the President but not on the Governor in state”
<p>“Article 164”</p>	<p>“The Council of Ministers are collectively responsible to the state legislative assembly”</p> <p>Note: “This provision is the foundation of the state parliamentary system”</p>

The Governor lacks actual authority since he is just the official head of state. The Chief Minister and Council of Ministers are endowed with real authority. Articles 154, 163 (discretionary authority), and 164 must be specifically mentioned when analysing his constitutional status.

According to Article 256⁵, each state must use its executive authority in accordance with the legislation passed by Parliament. It also provides that the Union may use its executive authority to command the state when the government believes it is necessary for a particular objective.

It is quite evident from Article 257 (1 and 2)⁶ that the executive authority of the States should be used without impeding the executive power of the Union. It also includes giving instructions to a state for the development and upkeep of communication infrastructure that has been deemed crucial for national security or military purposes.

⁵ Article- 256. Obligation of States and the Union.—The executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State, and 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.

⁶ Article- 257. Control of the Union over States in certain cases.—(1) The executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, and 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. (2) 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:

In accordance with Article 355⁷, the Union government is tasked with protecting the States from foreign aggression and domestic unrest, as well as making sure that each state's government is operating in accordance with the Constitution.

According to Article 356⁸, the Union Government may directly assume control of the state machinery if the State Government is unable to operate in accordance with the Constitution's guidelines. Once the President of India has given his approval, the state's governor may declare Article 357⁹ focuses on the Central Government's utilisation of its legislative authority granted by the Proclamation it issued in accordance with Article 356.

The Governor may act at his or her discretion, according to the constitution; the President does not have this option. The 42nd Constitutional Amendment Act of 1976 also made ministerial advice obligatory on the President but not on the Governor. If there is any disagreement, the Governor has the last say and may decide to take further action or not. Thus, it may be claimed that although he has constitutional discretion, his actions must follow the Union government's lead.

Constitutional Articles related to the Governor¹⁰

“Articles	Provisions”
“153”	“Governors of states”
“155”	“Appointment of Governor”
“156”	“Term of office of Governor”
“157”	“Qualifications for appointment as Governor”

⁷ 355. Duty of the Union to protect States against external aggression and internal disturbance.—It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the Government of every State is carried on in accordance with the provisions of this Constitution.

⁸ 356. Provisions in case of failure of constitutional machinery in States.—(1) If the President, on receipt of a report from the Governor 2*** of a State or otherwise, is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by Proclamation

⁹ 357. Exercise of legislative powers under Proclamation issued under article 356.—(1) Where by a Proclamation issued under clause (1) of article 356, it has been declared that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament.

¹⁰ibid

“158”	“Conditions of Governor’s office”
“160”	“Discharge of the functions of the Governor in certain contingencies”
“161”	“Power of the Governor to grant pardons and others”
“175”	“Right of the Governor to address and send messages to the house or houses of the state legislature”
“176”	“Special address by the Governor”
“201”	“Bills reserved by the Governor for consideration of the President”
“213”	“Power of Governor to promulgate ordinances”
“217”	“Governor is consulted by the President in the matter of the appointments of the judges of the High Courts”
“233”	“Appointment of district judges by the Governor”
“234”	“Appointments of persons (other than district judges) to the judicial service of the state by the Governor”

The Governor of a state is the equivalent of the President of a nation. Since the President is the head of state, he gives the Prime Minister authority to lead the nation. Department and agency heads, many of whom they have the power to choose, support and help governors in carrying out their management and leadership duties and goals. A CM often tenders his or her resignation to the Governor after losing an election. In addition to taking an oath in front of the Governor, the newly elected Chief Minister also receives his authority from the Governor.¹¹

¹¹ibid

V. GOVERNOR'S DUTIES AND POWERS

The Governor's Executive Powers¹²

He has the following executive authority:

1. He must sign off on all executive actions that the state government conducts.
2. The Governor may specify the procedures for authenticating an order that has been issued in his name.
3. He may or may not enact regulations to streamline state government operations.
4. He appoints the “chief ministers and other ministers of the states”.
5. In the following states, it is his duty to select a tribal welfare minister:
 - “Chattisgarh
 - Jharkhand
 - Madhya Pradesh
 - Odisha”
6. He selects and sets the compensation for the state's advocate general.
7. He names the following individuals:
 - Elections Commissioner for the State
 - The State Public Service Commission's chair and members
 - Vice Chancellors of the state's universities
8. He contacts the “state government for information”.
9. He recommends to the “President that the state declare a constitutional emergency”.
10. When the president is in charge of the state, the governor has a wide range of administrative authority.¹³

Powers of the Governor in Legislation

The governor has the following legislative authority:

1. “He has the authority to dissolve state legislative assemblies and prorogue the state legislature.

¹²https://darpg.gov.in/sites/default/files/Compendium_FirstARC.pdf

¹³ibid

2. He speaks to the state legislature at the start of each year's session.
3. The governor may or may not send a bill to the state legislature about a bill that is now before it.
4. The governor selects a person to preside over the session if the speaker of the legislative assembly is absent and the Deputy Speaker is also not present.
5. The Governor appoints one-sixth of the total members of the legislative council from the following categories”:
 - “Literature;
 - Science;
 - Art; and
 - Collective Action
 - Social Services”
6. While the governor names one member of the “state legislature from the Anglo-Indian community, the president names two members of the Lok Sabha”.
7. He can speak with the Election Commission about members' disqualification.
8. In relation to the state legislature's measure, he has the following options: give his consent; withhold it; return the bill; or reserve it for the President's consideration. (In situations where a law submitted to the state legislature jeopardises the High Court's position,

In the following circumstances, the Governor may reserve the measure for the President's consideration:

- When the bill's provisions contravene the constitution (Ultra-Vires)
- When the bill's contents conflict with the “Directive Principles of State Policy”
- When a bill's provisions interfere with the nation's wider interests
- When a measure's clause refers to matters of national importance
- When the bill's provisions refer to the purchase of property, which is covered by Article 31A of the constitution,

Additionally, he has the authority to publish an ordinance when neither the Legislative Assembly nor the Council (Unicameral/Bicameral) is in session.

He has to file the following reports:

- “The Commission on State Finance
- Commission for State Public Services
- The General Comptroller and Auditor (concerning the state finances)
- Governor's Financial Authority”

The Governor's financial duties and authority include the following:

1. He examines the state budget as it is being presented to the state legislature.
2. His endorsement is a requirement before a money measure can be introduced in the state legislature.
3. He suggests requesting funding that would not otherwise be possible.
4. He is in charge of the state's contingency fund, from which he draws advances to cover unanticipated expenses.
5. He appoints the State Finance Commission every five years.¹⁴

Powers of the Governor in the Judiciary

The Governor's judicial duties and powers include the following:

1. He is capable of forgiving the following types of punishment:
 - “Pardon
 - Reprieve
 - Respite
 - Remit
 - Commute”
2. “Before selecting justices to the High Court, the President contacts the Governor.
3. The Governor appoints, posts, and promotes district judges after consulting the state High Court.
4. He also assigns people to the judicial services after consulting with the state high court and the state public service commission”.¹⁵

Governor Special Authority and Responsibilities

The Governor is given several unique duties within the President's discretion. The ultimate

¹⁴ibid

¹⁵ibid

decision is up to him, even though he must consult with the Chief Minister and the Council of Ministers. Here are a few examples:

- The establishment of separate development boards in “Maharashtra's Vidarbha and Marathwada, Gujarat's Saurashtra and Kutch, and Karnataka's Hyderabad-Karnataka”.

As long as there is domestic unrest in the Naga Hills, the Tuensang area will continue to have law and order issues.

- In terms of Assamese tribal lands management
- In relation to the management of Manipur's hill regions.
- To ensure the socioeconomic growth of Sikkim's various demographic segments
- Issues pertaining to Arunachal Pradesh's law and order.

Governor is consulted by the President Judges of the High Court are chosen and given specific duties throughout the appointment process.

According to “Article 217 of the Indian Constitution”, the President shall appoint each judge of the high court by issuing a warrant, which stays in his hand with seal, after consultation with the “Chief Justice of India and the Governor of the State”.

Therefore, the “Chief Justice of the Supreme Court and the Governor” of the relevant State would be consulted before the “President” names the “Chief Justice of the High Court”. The same process will be used to nominate judges, with the addition of consulting the “Chief Justice of the High Court”. The Chief Justice of India must contact two of the most senior justices on the Supreme Court before recommending anything to the President, the Supreme Court said.

- The judge may be dismissed from his position by the President in the same way as a Supreme Court judge may be dismissed under Article 124, clause (4).
- By submitting a letter by hand to the President, a judge may retire from their office; and
- A judge's post is vacated when the President is appointed to the “Supreme Court or moved to another High Court that” is located on Indian territory.

VI. RELATION OF GOVERNER AND STATES

- The Chief Minister of the state has actual authority, not the governor, who serves as the official leader.
- The central government in power "selects" the governor, as opposed to the president of India, who is "elected."

- The governor serves as both the official state leader and a key conduit between the federal and state governments.¹⁶

Recent conflicts between the Governor and Chief Minister

Issues pertaining to the office of governor

- The chief minister's selection has been the topic of recent debates.
- Choosing when to demonstrate a legislative majority
- It appears to take a long time to ratify measures or reserve them for the President.
- Misuse of Article 356¹⁷- In certain states, a governor's request for President's Rule (Article 356) hasn't always been founded on "objective material," but rather on political whim or fancy. Political parties in control at the federal level have exploited this authority to overthrow governments in states run by opposing parties.
- Making negative remarks about certain state government programmes.
- Using the governor's authority in his capacity as chancellor of public colleges
- Abuse of Power by the Center: There are many instances of the governor's office being used improperly, almost always at the direction of the centre's governing party.¹⁸

Generally speaking, the governor selection procedure has generated controversial.

- *Biased Ideology*-The central government has nominated politicians and former bureaucrats who identify with a certain political ideology as governors in a number of instances. This is biased and goes against the neutral seat required by the constitution.
- *Puppet Rulers*- The Rajasthan governor was recently accused of breaking the model code of conduct. The expectation of non-partisanship from those holding constitutional positions is violated by their support for the main governing party.
- *Favoring a Specific Political Party*- The governor's discretionary powers to choose the biggest party or alliance's leader to lead the formation of the government after an election have often been abused to favour a specific political party.

¹⁶<http://interstatecouncil.nic.in/sarkaria-commission/>

¹⁷ Article-356. Provisions in case of failure of constitutional machinery in States.—(1) If the President, on receipt of a report from the Governor 2*** of a State or otherwise, is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by Proclamation

¹⁸Dhavan, Rajeev (2017), "From Goa to Manipur, Modi's Governors Have Sabotaged Democracy", *The Wire*, 23.03.2017.

- *Partisan role in Hung assemblies*- Governors have the discretion to choose which party or combination of parties is most suited to form the government in the event of hung assemblies. At the Centre's direction, governors misuse this power in a politicised way.
- There are several cases when the opposition parties are asked to form governments even if they seem to have fewer seats.
- For instance, despite the opposition alliance claiming a majority, the governor of Karnataka recently asked the BJP to form the government there.¹⁹

West Bengal

- West Bengal Governor Dhankhar is said to have regularly called both the “Chief Secretary and the Director General of Police”. He often mentions the Chief Minister on Twitter when they fail to show up.
- On the grounds of the State Assembly, Mr. Dhankhar recently had a run-in with Assembly Speaker Biman Banerjee.
- He refused to sign the “Howrah Municipal Corporation (Amendment) Bill 2021”, postponing elections for the local government.
- He has alleged wrongdoing in social programmes and disputed government assertions about investments in the state.

Maharashtra

- Governor Bhagat Singh Koshyari of Maharashtra has halted the Speaker election since the position became vacant in February 2021.
- The governing coalition rejects the governor's assertion that the State Assembly cannot set its own rules.
- Until the case made it to the High Court, he had refused to accept the “Council of Ministers' advice about the nomination of 12 members to the Legislative Council”.

Tamil Nadu

- The T.N. Admission to Undergraduate Medical Degree Courses Bill, which was approved by the Assembly in September 2021, has not been acted upon by Governor R.N. Ravi of Tamil Nadu.

¹⁹ibid

- The Governor is supposed to either submit it to “the President of India for approval” or send it back to the Assembly for review, but the legislature is being undermined by the protracted delay in making a decision.²⁰

VII. JUDGEMENTS AND RECOMMENDATIONS BY SUPREME COURT AND COMMITTEES

The governor's office has often been exploited, often in accordance with the preferences of the center-right dominant party. This is a result that can be explained by the governor's appointment procedure. Most often, political ideologists have been chosen by governments to serve as a governor, which goes against the constitution's need for neutral or nonpartisan governors. Biases as a consequence have been evident in Goa and the state of Karnataka.

Very important concerns about the duties and authority of the governor in accordance with the elected government of a state and the legislature have recently come up in Rajasthan (2020). It was the first time that the governor postponed convening the assembly despite the state cabinet's request that he do so as he raised queries and sought answers about the house's agenda. It should be noted that, even if the Governor offers a different date, he is required to sign the order. The elected alone has the power to choose the proposed session's start date.²¹

The Supreme Court's seven-judge constitutional panel ruled in *Shamsher Singh v. State of Punjab*²² in 1974 that "the Governor has no jurisdiction to refuse to act on the advice of the Council of Ministers." A viewpoint like that is counter to the idea of responsible government. The Governor's involvement is revealed in this statement.

The Supreme Court rejected the argument in the *S.R. Bommai v. Union of India case* (1994)²³ that the Assembly is the sole arena for testing the majority of the government and not the Governor's judgement, which is referred to as the agent of the Central Government. In spite of getting a copy of the resolution voted by the Janata Dal Assembly, the then-Governor of Karnataka, P. Venkatasubbaiah, declined to offer Bommai (the state's chief executive in 1989) the chance to test his majority in the Assembly. Then, Bommai sent a petition to the Karnataka High Court to challenge the Governor's suggestion of President's Rule, but the High Court turned down the petition.

The Supreme Court ruled in *NebamRebia and Etc, Etc vs. Deputy Speaker and Ors* (13 July

²⁰ibid

²¹Laximikanth, M (2020) (6th Edition), Indian Polity, McGraw-Hill, New Delhi.

²²1974 AIR 2192

²³1994 2 SCR 644

2016)²⁴ that the Governor's responsibility for the assembly stops with the summoning of the house. A governor "can not have an overriding power over the representatives of the people, who form... the state legislature... and/or even the executive government acting under the Council of Ministers with the Chief Minister as the head," according to the Supreme Court.

The *Administrative Reforms Commission* (1968) emphasised that it was improper to appoint the governor based on political affiliation since doing so would be detrimental to his job. Additionally, it was advised that the Governor's report on the President's rule should be subjective.

The *Sarkaria Commission* (1988) had also stressed the importance of the personalities of the governors who would be chosen. Four requirements were listed, including the need for the candidate to be "eminent in some field of life," "from outside the state," and "separate and not too closely associated with the local politics of the state."²⁵

There have been attempts to resolve the tussle.

The Commission on Administrative Reform (1968)

- President's rule: It was advised that the governor's report on the President's rule be impartial and that the governor use his or her own discretion in this matter.

The Committee of Rajamannar (1971)

- Governor's Role: The Rajamannar Committee emphasised that the state's governor should not see himself as an instrument of the federal government but rather fulfil his constitutional duties as the leader of the state.

Recommendations of the Sarkaria Commission, 1983

- Hung assembly - It outlined the priority sequence that the Governor should follow when selecting a CM in this situation.
 1. A coalition of political parties formed prior to the elections
 2. The one party with the most supporters, including independents, lays a claim to forming the government.
 3. A coalition of parties formed after the election, with each member joining the ruling party.

²⁴(2017) 13 SCC 332

²⁵https://www.tamildigitallibrary.in/admin/assets/book/TVA_BOK_0009072_Report_of_the_centre-state_relations_inquiry_committee.pdf

4. A post-election coalition of political parties occurs when some of the parties form a government while the other parties, including independents, support the government from the outside.

- The appointment of the governor should include consultation with the chief minister.
- Removing the Council of Ministers: When the Council of Ministers has a majority, the Governor is unable to do so.

S.R. Bommai Decision (1994)

- President's Rule: "The Supreme Court divided constitutional failures into four categories: political crises, internal subversion, physical breakdowns, and non-compliance with Union Executive constitutional directives."
- The decision permits the Supreme Court to look into allegations of deceit in the Governor's report.

Guidelines from the Punchhi Commission (2007)

- According to the Punchhi Commission on Centre-State Relations, "if no party or pre-election coalition has a clear majority, the governor must ask the leader of the largest pre-poll alliance or the largest single party to form the government".

VIII. CONCLUSION

The Governor has extensive power. He has the option to use certain abilities. The Governor has the power to advise, support, and caution the minister regardless of their political party. The personality and skills of the person holding the position of governor are what define it. If the Governor has a strong personality, he will have a great deal of influence over his government. A weak Governor, however, would have an impact on the whole ministry.

For the government to function properly, the governor must use his discretion and personal judgement while acting prudently, impartially, and efficiently. Instead of a panel chosen by the state legislature, the Inter-state Council, not the federal government, should have the real authority to appoint governors.

The Governor's Code of Conduct should outline certain "norms and standards" that the governor may use and practise in making decisions while exercising his "discretion" and his powers. India's federal structure has to be tightened in order to stop the governor's position from being misused. In this approach, the Inter-State council and Rajya Sabha's role as the federalism chamber must be reinforced.