



POWER AND FUNCTIONS OF GOVERNOR

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Introduction

The governors and lieutenant-governors of the states and union territories of India have similar powers and functions at the state level as that of the President of India at Union level. Governors exist in the state while lieutenant-governors exist in union territories and in the National Capital Territory of Delhi. Governor acts as the nominal head whereas the real power lies in the hand of the chief ministers of the states and the chief minister's Council of Minister. In India, a lieutenant governor is the charge of a Union Territory. However the rank is present only in the union territories of Andaman and Nicobar Islands, Delhi and Pondicherry (the other territories have an administrator appointed, who is an IAS Officer). However the governor of Punjab acts as the administrator of Chandigarh.

The Governor is the head of the State executive. He is also the representative of the Center in the State. He is appointed by the President and he enjoys the same position in the state as the President enjoys in the Centre.

Article 153 of the Indian Constitution provides that

-“There shall be a Governor for each State.”

Article 155 of the Indian Constitution provides that

-“Governor of the State shall be appointed by the President by a warrant under his hand and seal”.

Governor is appointed on the basis of Convention like :-

- First Convention is that the Governor should not be the resident of the State of which he is to be the Governor.
- Second Convention relates to the consultation of the State Chief Minister of that State.

Qualifications

Article 157 and Article 158 of the Constitution of India specify eligibility requirements for the post of Governor. They are as follows:

Governor must

- Be a Citizen of India
- Be at least of 35 years old
- Not be a member of the either house of the parliament or house of the state legislature.
- Not hold any office of profit.
- Should not be declared bankrupt by any court of law.

Term

The governors and lieutenant-governors are appointed by the president for a term of 5 years. If there is a casual vacancy or void by his absence, then the Chief Justice of the State High Court acts as the acting Governor.

Emoluments

At present, the Governor gets an emolument of Rs.1,10,000 per month, besides a rent free official residence and prescribed travelling sumptuary and other allowances. He is paid out of the revenue of the state. When the same person is appointed a Governor of two or more states, the emoluments and allowances payable to the Governor are allocated among the states in such a proportion as the President may by order determine. The emoluments and allowances of the Governor cannot be reduced during his term of office.

Legal Immunities of the Governor

- Governor of a State is not answerable to any court for the exercise and performance of the powers and duties of his office or for any act done or purporting to have been done by him in the exercise and performance of his powers and duties.
- No civil or criminal proceedings can be instituted against him during his term of office.
- No writ for the arrest or imprisonment of the Governor can be issued by any court during his term of office.

Powers and Functions

“The powers of the Governor of a state are analogous to those of the President excepting that the Governor has no diplomatic, military or emergency powers.” – D.D. Basu.

As the Head of the State, the Governor enjoys a large amount of powers and dignity.

Executive Powers

The constitution vests executive powers in the hands of the Governor. He appoints the Chief Minister and other ministers on the advice of the Chief Minister. Ministers hold office during the pleasure of the Governor. The Governor can remove the Chief Minister of the State in case he feels that the government does not enjoy the confidence of the majority or is not working in accordance with the constitutional provisions. He is consulted in the appointment of the Judges of the High Court of the State. All major appointments in the State are made by the Governor like

- Advocate General
- Chairman
- Members of Public Service Commission
- Vice – Chancellors

He can seek information from the CM about the state administration. The President consults him while appointing the Judges of the High Court. The Governor acts as the Chancellor of the State Universities.

The State administration is run in the name of the Governor. He runs the administration of the State in respect of all subjects which are within the legislative competence of the State. He makes rules regarding the convenient transaction of business in the State Council of Ministers. It is the duty of the Chief Minister to communicate to the Governor all decisions of the Council of Ministers relating to the administration of the State and proposal for legislation. Under Article **167 (c)** of the Constitution, the Governor is empowered to ask the Chief Minister to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but is has not been considered by the Council. The Ministers are responsible for all the acts of the Governor. But during Constitutional Emergency, the Governor becomes a real Executive head of the state. Due to the operation of parliamentary form of government at the State level, the Governor exercises all his executive powers in accordance with the advice of the State Council of Ministers and the Chief Minister.

The Governor of Assam, Sikkim, Jharkhand, Madhya Pradesh have some special powers for protecting the interest of Scheduled Tribes. The Governor can remove the Chief Minister if he finds the Government unconstitutional. Example : Governor of J&K, Mr. Jagmohan in July 1984, removed CM Farooq Abdullah.

Legislative Powers

The Governor is closely connected with the Legislative Assembly of the State. He summons, prorogues and dissolves the State Legislature. He convenes the State Legislature, addresses it in person, and sends messages to it. All bills passed by the Assembly in order to be placed in the Statute book must receive the assent of the Governor. He may assent to a bill or withhold it and return to it for the re-consideration of the State Legislature. If the bill is returned by the governor, is again passed with or without amendments, the Governor must give his assent thereto. He has, however, no power to return a Money Bill.

There is another provision under Article 200 of the Constitution, which empowers the Governor to reserve a Bill for the consideration of the President, the President shall declare either that he assents to the bill or that he withholds assent there from. However, there is no remedy to the Presidential veto over the bills reserved for his assent.

The Governor has the power of promulgating ordinance during the recess of the Legislature. The ordinances so promulgated cease to operate at the expiration of six weeks from the re-assembly of the State Legislature or earlier, if a resolution disapproving such an ordinance is passed by the State Legislature. The Constitution provides that the Governor shall not, without instructions from the President, promulgate any such ordinance,

- If a Bill containing the same provisions would have required the previous sanctions of the President for the introduction thereof into the legislature or
- If the Governor would have been reserved Bill containing the same provisions for the consideration of the President, or
- If an Act of the State Legislature 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.

Thus, the ordinance making power of the Governor is limited in the above-mentioned specified subjects where he must obtain prior approval of the President. Further, this power of

promulgating ordinance is to be exercised with the aid and advice of the Council of Ministers. He can nominate some members from the Anglo-Indian community to the Legislative Assembly.

He nominates 1/6 members of the Legislative Council from amongst persons having distinguished careers in the field of Arts, Science, Literature or Social service.

Financial Powers

The annual budget of the State is laid before the State Legislative Assembly with the approval of the Governor. He shall cause it to be laid before the State Legislature. No proposal for higher taxation or greater expenditure can be discussed in the State Legislature without prior permission of the Governor. Besides, the Governor may place supplementary budgets before the Legislature. A State Contingency Fund has been created and is placed under the Governor of a State to authorize immediate expenditure pending future legislative sanctions.

Judicial Powers and Immunity

He can influence the appointments, postings and promotions of the district judges and other judicial officials.

- The Governor appoints the district judges.
- He is consulted in the appointment of the judges of the High Court by the President;
- He can pardon, remit and commute the sentence of a person convicted by a state court.

Article – 161, states that

“He has the power to grant Pardon, reprieve or remission of punishment or to suspend, remit or commute the sentences of any person, convicted of any offence against any law relating to the matter to which the executive authority of the State extends.”

Miscellaneous Powers

He is the Ex-Officio Chancellor of the Universities of the State. Here he performs a number of functions, which are primarily of ceremonial character like the conferment of degrees, appointment of the Vice-Chancellor of the Universities of the State. Here he performs a number of functions, which are primarily of ceremonial character like the conferment of degrees, appointment of the Vice-Chancellor, etc. He may patronize the Red Cross Society and similar philanthropic organizations. He receives the annual report of the State Public Commission and passes it to the Legislature for discussion.

Similarly, he receives the report of the Account-General of the State and submits it for the consideration of the Legislature. Under Article 356(1) of the Constitution he is authorized to submit a report to the President for the proclamation of Emergency in the State, if he is satisfied that, the situation has arisen in which the Government of the State cannot be carried on the accordance with the provisions of the Constitution. During such Emergency, he may exercise tremendous powers as the agent of the President. The Governor of Assam possesses a discretionary power for administration of Tribal Affairs in the State. He can also use his power to dismiss the ministry, or State Legislative Assembly.

Discretionary Powers:

- If no party gets an absolute majority, the Governor can use his discretion in the selection of the Chief Minister.
- During an emergency he can override the advice of the council of ministers. At such times, he acts as an agent of the President and becomes the real ruler of the state;
- He uses his discretion in submitting a report to the President regarding the affairs to the state; and
- He can withhold his assent to a bill and send it to the President for his approval.

Some Historical Roles of Governors

- Governor of J&K Mr. Jagmohan removed Chief Minister Farooq Abdullah.
- In Andhra Pradesh, the Governor played a key role in the dismissal of N.T. Rama Rao's Government in 1987.
- In April 1995, the Governor of Tamil Nadu gave permission to Dr. Subramaniam Swamy to launch prosecution against Chief Minister Kumari Jayalalitha on charges of Corruption.
- In May 2001, the Governor of Tamil Nadu appointed Kumari Jayalalitha as the Chief Minister, despite the fact that she stood debarred from contesting elections. She was appointed Chief Minister because her party AIADMK after winning the election had elected her as its leader.
- In 2005, Bihar Governor Buta Sing's dissolve the State Legislative Assembly which received a very critical comments from the Supreme Court of India. The Bihar Governor, consequently, had to quit office.
- In 1952, Mr. Sriprakash appointed Mr. C. Rajagopalachari as the Chief Minister despite the fact that he was not having a majority in legislature.

- Same happened in Rajasthan i.e., the Governor appointed Mr. Mohan Lal Sukhadia as the Chief Minister.
- In 1970, the Governor dismissed Charan Singh government in Uttar Pradesh.

Governor is not a Golden Zero

Every Governor and every person discharging the function of the Governor shall make a subscribe an oath or Affirmation. (**Article 159**).

The Governor of a State had to play a dual role as Constitutional Head of the State as well as a Representative of the Centre. Governor is not merely a figure head. The Administrative Reforms Commission review that – “The Governor functions, for most purposes as a part of the State apparatus, but he is meant, at the same time, to be a link with the Centre.”

He can exercise some powers in his discretion and independent of the recommendations made by the State Chief Minister. If any question regarding the exercise of the discretion of the Governor arises, the decision of the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion. The courts of the land do not have the power to question the action of the Governor taken in his discretion and the decision of the Governor shall be final. Governor is a Constitutional functionary. He has to take care of the interests of the nation as a whole as against the interest of the State itself. If and when there is a conflict of interest, he must look after the interest of the whole Union.

For example : if there is a Bill passed by the State Legislature that is likely to adversely affect any other State or the nation as a whole, he is not supposed to sign the Bill and instead, reserve it for the assent of the President.

A Governor is not a representative of any party. He is a Representative of the Union in a State. As his appointment is made by the President of India on the recommendation of the Prime Minister, he is inclined to remain more loyal to the center than to the states. He ensures that the directives issued by the center to the states are carried out and the Government of the state is carried on in accordance with the provisions of the constitution. It is on the recommendations of the Governor that the President usually issues a proclamation of emergency in the state on account of constitutional breakdown of the state machinery. The opposition at the Centre could be the ruling party in a State of which he may be the Governor by the Dictates of the majority party in the State or at the Centre. The people expect that he will act neither as a politician nor as a central agent. He will act as the head of the State

Administration, a coordinator and facilitator always keeping in view the Constitution of India and interests of the State he heads.

Even after the state is placed under president rule, the governor is the chief representative of the President in the state to turn the administration of the state on his behalf. When President's rule, has been imposed on a state the governor ceased to be a constitutional ruler of the state and acts as an agent of the president.

V.B. Giri, the former Governor of Mysore, called himself to be an "Ambassador" of the Central Government to the State administration. Governor Sri Prakasa also called himself an "agent of the center".

The Governor holds a key position in the state and is a hyphen which binds the relation of the state with center. He is the link that fastens the federal state chain, the channel which regulates union-state relations.

It is the Governor who helps in building up the image of the state at the center. He focuses on the needs and the interests of the state at the central level.

As a matter of fact, the term 'agent' and 'constitutional head' are two contradictory things in the sense that the Constitutional Head is supposed to be impartial, whereas an agent is always partial.

Prof. K.V. Rao asserts, "one of the causalities of the Nehru era is the state Governor." The role of the Governor was restricted in the Nehru era because there was one political party that was one political party that was in power in the center as well as in most of the states.

The Governors came into great prominence after 1967 when they were faced with difficult situation especially as no one political party could secure a clean majority. This provided governors an opportunity to exercise their discretionary powers.

In 2006 President Dr. APJ Abdul Kalam called upon the Governor to perform their constitutional functions in an objective and impartial manner. In fact it is essential that every Governor must observe a self-imposed code of Constitutional propriety. No Governor should act against the spirit of true federalism, even while acting as the agent of the center in the State.

Is the Position of the Nominal Head under Threat?

A review of the powers of the Governor give rise to the view that he has got wide powers and is not a constitutional ruler. However, being the head of a State, which has a parliamentary

system, the Governor normally acts as a constitutional-nominal head. However in certain cases he can act in his discretion.

Normally, the Governor acts as a constitutional head of the state by carrying out this work in accordance with the advice of the State Council of Ministers, which is responsible for all his acts before the State Legislative Assembly. The framers of the Constitution intended the Governor to be a nominal head.

“Governor’s powers would be so limited, so nominal and his position so ornamental, that it was waste to spend public money on the election of governorship.” – Dr. Ambedkar
The recent news as well as incidences after the NDA (National Democratic Alliance) Government came to power brings the position of the Governor in the limelight. Governor enjoys the same power and positions in the State which is enjoyed by the President at the Center.

The dismissal of Governor in 2004 by the UPA (United Progressive Alliance) Government and the dismissal of Governors by the NDA Governments awaken the nation and pose the question on the existence and need of the Governor in a State.

Is it that the Governor is at the mercy of the ruling party? If not then why in 2004 when the UPA Government was in power the following Governors were dismissed and was given unceremonious exit just because they were from NDA Government:

- Vishnu Kant Shastri
- Kailashpati Mishra
- Balu Parmanand
- Kidar Nath Sahini

The same history was repeated in 2014, after the general election NDA Government came to power and did the same. The UPA elected Governors were nearly thrown out rather made them bound to resign.

Name of the Governors who left their posts during the reign of NDA are:

- M.K. Narayan (West Bengal)
- B.L. Joshi (Uttar Pradesh)
- B.V. Wwanchoo (Goa)
- Shekhar Dutt (Chhattisgarh)
- Ashwini Kumar (Nagaland)
- V.Purushothaman (Mizoram)

- Sheila Dikshit (Kerala)
- Vinod Kumar Duggal (Manipur)
- Kamal Beniwal (Mizoram)
- H.R. Bharadwaj (Karnataka)
- Shivraj Patil (Punjab)
- J.B. Patnaik (Assam)
- Margaret Alwa (Rajasthan)
- K.Sankarnarayanan (Maharashtra)

The demand of removal of Governor from the political system was a challenging question to the Constitution of India.

Here are some contradictory situations which need to be seen carefully.

A Governor is Provided Legal Immunities

- ❖ To contradict this clause we have the current case of M.K. Narayan- the Governor of Bengal. He was questioned in the criminal case of Augusta Westland Firm and thus he resigned from his post on 1st July, 2014.
- ❖ It's the Constitution which provides legal immunities to the Governors and charging the Governor during their term in office is an unconstitutional act. Despite of this a CBI team questioned B.V. Wanchoo – the Governor of Goa; and recorded his statement for its probe into allegations of bribery in the Rs.3600 crore VVP chopper deal with Augusta Westland Firm.
- ❖ Kamala Beniwal, Governor of Mizoram also resigned on 6th August 2014 after she was questioned on Jaipur Land Scam.

These “Unconstitutional” acts is again a question i.e. which is more unconstitutional?

To question the Governor in a Criminal case during his term in office.

OR

The governor's act of being a part of Scams & Illegal activities.

Is it Constitutional to Demand for the Removal of Governors by the Ruling Party?

The Supreme Court is clear in the operative part of the judgment in 2010 that the Union Government or the President has powers to remove any Governor. The Constitution is very clear that a Governor only holds office during the pleasure of the President and the apex

Court said that courts will presume the bonafide of the President's action in removing a Governor.

Do the Governor has Right to Ask Question on his Removal?

Expert says NO. The Governor has no right to ask why he/she was declined from the governorship.

Subash C. Kashyap, former secretary-general of Lok Sabha and a constitutional expert said in an interview that only the President of Indian, who represents the Union of India, is authorized to ask for a governor's removal. The court also presumes that the president is acting on the advice of the council of ministers.

According to the Supreme Court ruling, there can be no dispute on the point that the president has the power to remove a governor.

Seeking governor's resignations is the "prerogative of the government, as has been in the past."

The dignity of a governor's office demands that the moment a Union government does not want him, he must walk out. A Governor never asks on what merit he is appointed, so why must he//she ask questions on being removed?

But if the Governor feels that the grounds for his removal are mala fide, then he has to make "a very strong case" before the court proving his removal is capricious and arbitrary.

Can the Governor take Independent Decision?

Governors were so Powerless during the 1950-67 period that some of them wondered whether the office they held was of any consequence of all. In his article entitled, 'The Governor at work', K.V. Rao has quoted Sarojini Naidu, Governor of Uttar Pradesh, as having said that she considered herself as a bird in a golden cage.

Dr. Pattabhai Sitaramaya observes that he had no public function to perform except to the President when Nehru was asked directly as to what were the functions of Governors, he replied, to entertain the people and make them feel pleased.

Sri Prakasa and Vijayalakshmi Pandit who were former Governors complained that the office of the Governor was redundant. They pleaded that the office of the Governor may either be abolished or given certain functions to perform.

The governor enjoys all the governmental rights but still can't work independently.

He has to consult the Chief Minister in appointing other ministers.

The ordinance so issued by the Governor ceases to operate after six weeks from the date on which the state legislature comes into session or before the end of this period is a resolution is passed by the state legislature disapproving the ordinance concerned.

In 2005 when the Bihar Governor Buta Singh dissolved the State Legislature, faced critical comments from the Supreme Court of India and consequently had to quit office.

Conclusions

By this time we all now acquired the true position, role and need of Governor. Even being a selected member he is bestowed with all the powers and dignity which even the elected members do not enjoy. India's state governors are largely figureheads. Chief Ministers get most of the power, so usually nobody pays much attention to that other state-level dignitary.

We may conclude that the Governor has to important roles to play, as the representative or the center in the state, it is his responsibility to see that the federal balance and political stability are not sought to be destroyed. In his role as the head of the state government, he has discretionary powers. He is not merely a figurehead or a nominal head, or a passive spectator. But the exact range of his powers would greatly depend upon the political situation that exists in the state. If there is great deal of political harmony in the state, the burden of the Governor is greatly reduced.

If there is great deal of political discharge money in the state and political stability is being undermined the role of the Governor naturally becomes much larger.

The Supreme Court has expressly laid down that governorship is an independent constitutional office which is not subject to the control of the Government of India.

Ujjwal Kumar Singh, who heads the political science department at Delhi University, said a state governor "can do little to influence the decision – making, and normally serves a quiet term in his office." A Governor has to satisfy both the Centre and State. The Central government expects him to take care of its interests (at times political interests), and the State government wants him to always act according to the wishes of the State Chief Minister and the Council of Ministers. When the Central government is being run by a party other than the one which is in power at the State Level, the position of the Governor, at times, becomes critical and controversial.

Further the appointment and removal of Governors on political considerations always adversely affects the working and prestige of the office of Governor. At times the union government tries to use him as a pawn on the political chess board.

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