

# The Tussle between Governor and Chief Minister

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## Objective

- To Analyse the dispute between governor and state government.
- To Analyse the interference of central government in appointment of Governor.
- To understand the various recommendation of commission for settlement of dispute.

## ACKNOWLEDGEMENT

I would specially like to thank my guide, mentor, Asst prof. Dr vivek kumar without whose constant support and guidance this article would have been a distant reality. This work is an outcome of an unparalleled infrastructural support that I have received from ICFAI Law School, ICFAI University, Dehradun.

It would never have been possible to complete this study without an untiring support from my friends. This study bears testimony to the active encouragement and guidance of a host of friends and well-wishers.

## Abstract

The office of the Governor has a long history, though none too pleasant. Its colonial origin ethos and bureaucratic background naturally occasioned animated discussions in the Constituent Assembly on such aspect as the appointment, assigned to him a somewhat complex role - he was made a component of the State apparatus as well as a link between the Union and the federating unit, the latter in particular investing him with " a significance for national integration and for the preservation of national standards." There was his seemingly irreconcilable dual role for the first two decades after independence in view of the existence of political harmony resulting from the functioning of virtual one- party rule in the country. Consequently, the Constitution operated as a unitary one not even with subsidiary federal features. For the beginning, the Governor tended to be an "ornamental sinecure" concerned mostly In in they report. national Assembly. of has of making individual expires. deranged been views

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## About Governor

- Governor is a nominal executive head of the state.
- He forms an important part of the state executive where he acts as the chief executive head.

### Envisaged Role of Governor

- Vital link: Between the center and the states.
- Maintenance of national interests, integrity and internal security advocates central supervision for which the governor is required.
- Responsible government: For increasing responsible government in the states.
- Smooth functioning: Crucial in smooth functioning of democracy.
- Check arbitrariness: Governor is to check arbitrariness of the state government.

### Appointment of Governor

- The Governor is neither directly elected by the people nor indirectly elected by a specially constituted electoral college as is the case with the President.
- He/she is appointed by the President of India by warrant under his hand and seal (Article 155<sup>1</sup>).
- While drafting the Constitution, the Canadian model of Governor' appointment by the Centre was accepted in the Constituent Assembly.

## Qualifications

- The Constitution lays down only two qualifications for the appointment of a person as a governor.
- He/she should be a citizen of India.
- He/she should have completed the age of 35 years.
- Additionally, two conventions have also developed in this regard over the years.
- He/she should be an outsider, meaning not belonging to the State of appointment so as to remain free from the local politics.
- While appointing the Governor, the President is required to consult the Chief Minister of the State concerned, so that the smooth functioning of the constitutional machinery is ensured

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<sup>1</sup> Appointment of Governor The Governor of a State shall be appointed by the President by warrant under his hand and seal

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.
- 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?

- 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 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 CM and council of ministers while performing his duties as the administrator of a neighbouring 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 Licences by the governments of Sixth Schedule areas (Assam, Meghalaya, Tripura, and Mizoram).
- Situational discretionary powers:-
  - ◆ During Hung Assembly- The Governor can appoint 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 care taker 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<sup>2</sup>.

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

1) West Bengal- the Governor Dhankhar has been accused of summoning the Chief Secretary and the Director General of Police on a regular basis when they do not turn up, he takes up the matter to Twitter often tagging the Chief Minister. Mr. Dhankhar also had a run-in with Assembly Speaker Biman Banerjee recently, on the premises of the State Assembly.<sup>3</sup> He has withheld 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.<sup>4</sup>

2) 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.

3) In recent spat between the Kerala Governor Arif Mohammed Khan and the State government of Kerala, the governors active stand against the ruling state govt. or its functionaries has resurfaced again in political discussions. In development prevailed, Governor Arif Mohammed has declared his displeasure over the functioning of states Finance Minister K. N. Balagopal & requested his immediate removal in letter written to CM Pinarayi Vijayan. Governor sees the remarks made by K. N. Balagopal as grossly seditious, undermining the national unity, and sponsoring the regionalism. However, CM P. Vijayan has rejected the demand.<sup>5</sup>

4) Tamil Nadu- Governor R.N. Ravi has not acted 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<sup>6</sup>.

<sup>2</sup> provision with respect to the States of Maharashtra(Vidarbha and Marathwada) and Gujarat(Saurashtra and Kutch). Article 371A - Special provision with respect to the State of Nagaland(Naga hills , Tuensang area). It was inserted into the Part XXI of the Indian Constitution in the year 1962.

<sup>3</sup> Kesava Menon, How conflicts between Governors and State governments are playing out, Frontline 2 February 2023

<sup>4</sup> Ibid

<sup>5</sup> Omprakash Ajabe, Disputed role of Governor once again highlighted, By The Times Of India, 2 Feb 2023

<sup>6</sup> Gopal tiwari, Skipped para in speech, 'ondirya arasu': Know the details of the Tamil Nadu government Vs Governor RN Ravi controversy, Op india, 11 february 2023

- a. During his address to the Legislative Assembly, the Tamil Nadu governor skipped a few words including, the 'Dravidian model of governance' from the prepared speech.
- b. Background: The TN government and Governor Ravi have been at loggerheads over various issues, including his refusal to approve 20 bills.
- c. Most recently, the government has taken strong exception to Governor's remarks allegedly terming Dravidian politics as 'regressive politics'.
- d. The Governor also suggested changing the name of the state to 'Tamizhagam'.
- e. Earlier, Tamil Nadu government leaders have also boycotted events hosted by the state governor and publicly criticized some of his actions
- f. During a recent address to the volunteers of the Kashi Tamil Sangamam, the governor remarked that the word 'Tamizhagam' was a more appropriate term for Tamil Nadu.
- g. The issue with the name 'Tamil Nadu':
- h. At the center of the debate is the word "Nadu" which means "geographical boundary" or "land".
- i. The governor asserted that a misreading of Tamil history and the complexities of translation have resulted in "Nadu" coming to mean "country" or "nation-state", which has now become the source of Tamil Nationalism and separatist politics.

### **Concerns Related to the Office of Governor**

- Appointment/removal process: Governors hold office till the pleasure of the president as no grounds for removal is mentioned in the constitution.
- This leads to favoritism in the appointment process and well-suited candidates are ignored in favor of the less competent individuals.
- Acting as an agent of a political party at the Centre: Due to favoritism in the appointment and lack of any security of tenure in the constitution, the office of governor often works as a puppet/agent of the union government instead of acting as a bridge between state and Centre government.

### **Misuse of discretionary powers:**

- Hung assemblies: It is a situational discretion where s/he is free to invite a party/alliance to form the government in case no single party/pre-poll alliance has won the majority of the seats in the state assembly elections.
- Reserving a bill for the president's consideration: It is his constitutional discretion to reserve certain state bills for the consideration of the president.
- Misuse of the emergency powers: Governors have often been found to be recommending imposition of the president's rule in the state on frivolous grounds, especially when the ruling party at centre is different from that of the concerned state.



- Bypassing the elected government: There have been instances when governors found to give orders to state officials directly or visit public offices without informing the state governments. This is against his/her constitutional mandate as he is only a nominal head and expected to act on the advice of the CM in the state.
- Affiliation Based Appointment: Politicians and former bureaucrats affiliated with the ruling party have been appointed in several instances as Governors. This has led to questions about the post's impartiality and non-partisanship. Also, the convention of consulting the Chief Minister before appointing the Governor is often ignored .From Centre's Representative to Centre's Agent: Critics refer to governors as the 'agents of the Centre' today.
- In 2001, the National Commission to Review the Working of the Constitution, held that the Governor owes his appointment and his continuation to the Union. Apprehensions exist that he will follow instructions given by the Union Council of Ministers.
- This goes against the constitutionally mandated neutral seat and has resulted in bias.
- Misuse of Discretionary Powers: The discretionary powers of governor have been misused in many instances. For instance, it has been argued by critics that the Governor's recommendation for President's Rule in a state has not always been based on 'objective material', but on political whim or fancy.
- Removal of Governors: Having no written grounds or procedures for removing governors, several times governors were removed arbitrarily.
- No Clear Distinction Between Constitutional and Statutory Role: The constitutional mandate to act on advice of the council of ministers is not clearly distinguished from the statutory authority as chancellor, resulting in many conflicts between the governor and the state government. For instance, there was a recent appointment of a Vice Chancellor in a university by the Kerala Governor, bypassing government nominations.
- Constitutional Loopholes: In the Constitution, there are no guidelines for exercise of the governor's powers in case of appointment of Chief Minister or dissolving the Assembly.
- Also, there is no limit set for how long a Governor can withhold assent to a Bill.
- As a result, friction between the governor and concerned state governments is likely to arise.

### What are Reforms Proposed by Various Commissions?

- **Punchhi Commission:** The impeachment procedure for the **President** can be adapted to impeach governors as well<sup>7</sup>.

In case of appointment of state chief ministers, the Commission recommended that:

- There should be clear guidelines on the chief ministers' appointment so that the discretionary powers of the governor are limited in this regard.

<sup>7</sup> <https://economictimes.indiatimes.com/news/politics-and-nation/deliberations-on-punchhi-commission-report-completed/articleshow/64320379.cms?from=mdr>

- A pre-poll alliance to be regarded as one political party.
- Order of precedence informing state government:
  - The group/alliance with the largest pre-poll alliance with the highest number.
  - The single largest party with support from others.
  - The post-poll alliance with a few parties joining the government.
  - The post-poll alliance with a few parties joining the government and remaining including independents giving outside support.
- The **Convention of Governors serving as Chancellors** of Universities and holding other statutory positions should be abolished because it **opens their office to controversies and public criticism**.
- **2<sup>nd</sup> Administrative Reforms Commission:** The **Inter-State Council** should formulate guidelines on how governors should exercise discretionary power<sup>8</sup>.
- **Rajamannar Committee:** The **Rajamannar Committee** emphasised 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:** In its report, the Commission recommended that **Article 356 should only be used in very rare instances** when it is impossible to prevent a breakdown of constitutional machinery within a State.
- The Governor should be eminent in some walk of life and from outside the state. He should be a detached figure without intense political links, or should not have taken part in politics in the recent past. Besides,
  - he should not be a member of the ruling party. He should be appointed after effective consultations with the state Chief Minister and Vice President and Speaker of the Lok Sabha should be consulted by the PM before his selection.
- **Venkatachaliah Commission:** It recommended allowing Governors to complete their five-year terms ordinarily<sup>9</sup>.
- The **central government should consult with the Chief Minister** before removing them before the end of their term.

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<sup>8</sup> The Government of India founded the 2nd ARC on 31 August 2005 under the resolution K-11022/9/2004-RC

<sup>9</sup> The National Commission to review the working of the Constitution (NCRWC) also known as Justice Manepalli Narayana Rao Venkatachaliah Commission was set up by a resolution of the NDA Government of India led by Atal Bihari Vajpayee on 22 February 2000

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