

Role of Governor in Legislative Process in States: A Study

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Abstract

The role of the Governor in the legislative process of Indian states is a subject of continuous debate due to its constitutional importance and political implications. This study aims to analyse the constitutional provisions, powers, and discretionary functions of the Governor in the legislative process, examining their impact on governance and federalism in India. The Governor of an Indian state plays a significant role in influencing the legislative process, acting as the constitutional head of the state. While their role is largely ceremonial, they do have powers that can influence legislation in various ways. The objective of this paper is to critically examine the role of the Governor in India's democratic federal polity and to propose reforms that ensure a more effective and impartial exercise of the Governor's powers as outlined in the Constitution of India, 1950.

Keywords: Constitutional Morality, Federalism, Nominal Head, Parliamentary Government, Veto,

Introduction

The Governor, as the constitutional head of the state, plays a significant role in the legislative process. The Constituent Assembly initially intended for Governors in provinces to align with a genuinely federal Constitution. However, following partition and independence, coupled with secessionist threats from certain princely states, federal sentiments were subdued in favour of a strong central government. Consequently, the Governor's role, as outlined in the Constitutional Advisor's memorandum and the Provincial Constitution Committee's report, was modified to support a robust Centre, even though federalism remained a fundamental organizing principle of the Indian Constitution. Appointed by the President of India under Article 155¹ of the Constitution, the Governor's position is unique, balancing responsibilities towards both the State and the Union. The role involves legislative functions such as summoning and dissolving the State Legislature, giving assent to bills, and reserving

¹ Appointment of Governor. The Governor of a State shall be appointed by the President by warrant under his hand and seal. Constitution of India, art. 155.

bills for the consideration of the President under Article 200.² However, the discretionary powers vested in the Governor have often led to tensions between the State and the Centre, raising questions about impartiality and constitutional propriety. Firstly, the Governor is the only constitutional functionary explicitly entrusted with managing the federal processes of governance, playing a crucial role in maintaining the balance between the Union and State Governments. Secondly, if the Governor's role is exercised in the correct constitutional spirit, it can help transform potential confrontations between the Centre and States into opportunities for cooperation and coordination. Ideally, as the constitutional head of the State, the Governor should function as a bridge between the State and Central Governments, rather than acting merely as an agent of the Union. However, in practice, the role of the Governor has often been a subject of debate due to allegations of political bias and undue interference. This paper aims to explore these concerns and recommend structural and procedural reforms to ensure the Governor's office remains a neutral and effective institution in India's federal framework.

Constituent Assembly Debate over Powers of Governor

One of the first acts of the Constituent Assembly was to appoint a Committee on Provincial Constitution under the chairmanship of Sardar Vallabh Bhai Patel to frame the outlines of a model provincial constitution.³ The memorandum submitted by Shri B. N. Rau to the Provincial Constitution Committee had vested in the Governor's special responsibility for "the prevention of any grave menace to the peace and tranquillity of the Province or any part thereof", in the exercise of functions relating to which he was to act in his discretion.⁴ The Constituent Assembly's debates on the powers of Governors in Indian states were extensive and highlighted differing perspectives on their roles and functions. The Constituent Assembly Debates were shaped by concerns over the Governor's role in India's federal system and the need to maintain parliamentary democracy. Prof. K.T. Shah argued against discretionary

² Assent to Bills. When a Bill has been passed by the Legislative Assembly of a State or, in the case of a State having a Legislative Council, has been passed by both Houses of the Legislature of the State, it shall be presented to the Governor and the Governor shall declare either that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President:

Provided that the Governor may, as soon as possible after the presentation to him of the Bill for assent, return the Bill if it is not a Money Bill together with a message requesting that the House or Houses will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message and, when a Bill is so returned, the House or Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the House or Houses with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent therefrom:

Provided further that the Governor shall not assent to, but shall reserve for the consideration of the President, any Bill which in the opinion of the Governor would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by this Constitution designed to fill. Constitution of India, art. 200.

³ K.P. Singh, "The Governor in the Constituent Assembly" 26 *The Indian Journal of Political Science* 38 (1965).

⁴ *Ibid.*

powers for Governors, fearing potential misuse.⁵ However, there was Scepticism from Members like K.T. Shah feared that discretionary powers could be used to undermine the authority of the elected state government, making the Governor a tool of the central government. He advocated for Governors to act solely on ministerial advice, ensuring alignment with democratic principles. The Assembly deliberated on defining the Governor's role as a constitutional head, emphasizing that while the Governor holds executive power, it should be exercised based on the aid and advice of the Council of Ministers, reflecting the parliamentary system. These debates underscore the Assembly's efforts to balance the Governor's authority, aiming to prevent potential central overreach while ensuring effective governance at the state level. Dr. B.R. Ambedkar's Views repeatedly clarified that the Governor was not an independent executive like the President of the United States. He argued that the Governor, like the President of India, was meant to be a constitutional head, acting on the aid and advice of the Council of Ministers, except in specified circumstances. He emphasized that the Governor "shall not have any functions which he is to discharge by himself", except where the Constitution explicitly provides discretionary power.⁶ However, the Constitution does not give a detailed list of discretionary powers of the Governor, but they are understood through constitutional text, conventions, and judicial interpretation. In the case of *Samsher Singh v State of Punjab*,⁷ supreme court observe that that actions taken by the Governor without the concurrence of the Council of Ministers are not valid. In *B.K. Pavitra v Union of India*,⁸ where it was held that the Governor could reserve a Bill for the President against the advice of the Council of Ministers, was per incuriam as it ignored binding precedents like Samsher Singh case. The Court observed that the framers deliberately removed the phrase "in his discretion" from Article 200⁹ to deny the Governor discretionary powers. As per the Constitutional Assembly Debates and judicial precedents, the Court found that the Governor has limited discretionary powers. Article 163¹⁰ of Indian indicate that the Governor can act in discretion only in situations where the Constitution expressly allows or by necessary implication.

⁵ Constituent Assembly Debates on June 1, 1949 Part I available at: <https://indiankanoon.org/doc/1648960/> (Last visited on May 30, 2024).

⁶ *Ibid.*

⁷ AIR 1974, SC 2192.

⁸ AIR 2019, SC 2723.

⁹ *Supra* note 2.

¹⁰ Council of Ministers to aid and advise Governor. (1) 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 in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.

(2) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.

(3) The question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any court. Constitution of India, art. 163.

Legislative powers of governor: Theory and Practice

The Founders of the constitution adopt Parliamentary form of government both for union and states. If the Constitution remains in principle the same as we intend that it should be, that the Governor should be a purely constitutional Governor, with not power of interference in the administration of the province, then it seems to me quite immaterial whether he is nominated or elected.¹¹ However, the Governor, as the constitutional head of a state, enjoys several legislative powers under the Indian Constitution. He summons, prorogues, and can dissolve the Legislative Assembly as described in article 174 of Indian Constitution¹², and addresses the Legislature at the commencement of the first session after elections and the first session of each year.¹³ He can send messages to the House if the legislature is Unicameral and both houses if the legislature is bi-cameral¹⁴ and plays a crucial role in the law-making process: when a bill is passed, he may give assent, withhold assent, return it for reconsideration, or reserve it for the President's consideration.¹⁵ In case of a Money Bill it can be introduced only with governor's prior recommendation, and the State Budget and demands for grants are laid before the Legislature in his name. He also has the power to promulgate ordinances when the Legislature is not in session, which carry the force of law until approved by the Legislature. Further, the Governor can nominate one member of the Anglo-Indian community to the Legislative Assembly and nominate 1/6th of the members of the Legislative Council in bicameral states. Thus, the Governor serves as a vital constitutional link between the state executive and legislature, ensuring both democratic functioning and constitutional compliance. A Bill passed by the State Legislature becomes law only after the Governor's assent. The working of the constitution suggests that the apprehensions of some members of the CA that the union government would misuse weak position of Governor, often for political considerations, have been proved largely correct. Merit has been ignored in

¹¹ Constituent Assembly Debates on May 31, 1949 Part II available at: <https://indiankanoon.org/doc/1648960/> (Last visited on May 31, 2024).

¹² Sessions of the State Legislature, prorogation and dissolution. (1) The Governor shall from time to time summon the House or each House of the Legislature of the State to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session. (2) The Governor may from time to time-

(a) prorogue the House or either House;

(b) dissolve the Legislative Assembly. Constitution of India, art. 174.

¹³ Special address by the Governor. (1) At the commencement of the first session after each general election to the Legislative Assembly and at the commencement of the first session of each year, the Governor shall address the Legislative Assembly or, in the case of a State having a Legislative Council, both Houses assembled together and inform the Legislature of the causes of its summons. (2) Provision shall be made by the rules regulating the procedure of the House or either House for the allotment of time for discussion of the matters referred to in such address. Constitution of India, art. 176.

¹⁴ Right of Governor to address and send messages to the House or Houses (1) The Governor may address the Legislative Assembly or, in the case of a State having a Legislative Council, either House of the Legislature of the State, or both Houses assembled together, and may for that purpose require the attendance of members. (2) The Governor may send messages to the House or Houses of the Legislature of the State, whether with respect to a Bill then pending in the Legislature or otherwise, and a House to which any message is so sent shall with all convenient despatch consider any matter required by the message to be taken into consideration. Constitution of India, art. 175.

¹⁵ *Supra* note 2

the selection of the Governor.¹⁶ Appointment procedure is a core of controversy. With the change in the nature of party politics, especially after the third general elections, the formation of the non-Congress government in seven states and disappearance of great leaders from the scene, the scenario changed. The merit in the selection of the Governor was ignored. Governors were expected to follow the line of the ruling party at the centre and demonstrate loyalty to secure his/her tenure.¹⁷ The Governor, while constitutionally expected to act on the aid and advice of the Council of Ministers, has sometimes used his legislative powers in ways that have triggered political and constitutional controversies. One major area of contention is the withholding of assent or reserving of bills for the President's consideration under article 200.¹⁸ A precedent to check the constitutionality of this act of Governor by President, he seeks advisory opinion of supreme court under article 143¹⁹ in the case of *Kerala Education Bill*.²⁰ But later governments could not establish this precedent. Now the Governors have been accused of sitting on bills indefinitely or reserving them selectively to favour the Union Government, thereby delaying state legislation.

The Governor is meant to be a neutral constitutional head of the state, but in practice the office often creates problems for India's federal principles. Since the Governor is appointed by the Union Government, he is sometimes seen as acting in favour of the Centre rather than the elected state government. Controversies arise when Governor's delay or block state bills by reserving them for the President, misuse their discretionary powers in recommending President's Rule, or act in a partisan way during hung assemblies and government formation. Such actions interfere with the autonomy of states and disturb the balance of power in India's federal system. It would be possible to do so by the Inter-State Council to guide the governors in exercise of their discretionary powers.²¹

Conclusion

The members of the Constituent Assembly feared the misuse of the Governor's discretionary powers, and later developments proved their concerns right. More often than not, Governors have played a partisan role in the functioning of states. Such activities go against the federal principles enshrined in the Indian Constitution. To

¹⁶ Ashok Pankaj, "Governor in Indian Federalism—II: Hiatus between Constitutional Intents and Practices" 63 *Indian Journal of Public Administration* 13-14 (2017).

¹⁷ *Ibid.*

¹⁸ *Supra* note 2.

¹⁹ Power of President to consult Supreme Court (1) If at any time it appears to the President that a question of law or fact has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to that Court for consideration and the Court may, after such hearing as it thinks fit, report to the President its opinion thereon.

(2) The President may, notwithstanding anything in the proviso to article 131, refer a dispute of the kind mentioned in the said proviso to the Supreme Court for opinion and the Supreme Court shall, after such hearing as it thinks fit, report to the President its opinion thereon. Constitution of India, art.143.

²⁰ AIR 1958 SC 996.

²¹ Atul Kumar Tiwari, "A Chequered History of Governors' Discretionary Powers under Article 163" 63 *Indian Journal of Public Administration* 400, (2017).

protect constitutional values, new mechanisms should be developed, particularly Article 200²² should be reformed to curb the powers of the Governor. Moreover, the Governor should be a neutral figure, preferably chosen from a panel selected by a commission of scholars or non-partisan personalities. Compared to other democracies, India is still a young democracy, and therefore such new experiments are necessary for strengthening constitutional values and shaping the future of democratic politics.

²² *Supra* note 2.