
A CRITICAL REASSESSMENT OF GOVERNOR-STATE CONFLICT

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“The Governor is a sagacious counsellor, a constitutional sentinel and a friend, philosopher and guide.” -M.C. Setalvad

ABSTRACT

The office of the Governor occupies a significant position in India's federal constitutional framework, serving as the constitutional head of the State and a vital link between the Union and the States. Although envisaged as a politically neutral authority acting on the aid and advice of the Council of Ministers under Article 163, the Governor's office has increasingly become a source of constitutional and political controversies. The study traces the historical evolution of the office from ancient Indian administrative systems to its modern constitutional form inherited from the Government of India Act, 1935. It analyses key areas of conflict arising from the Governor's discretionary powers, including recommendations for President's Rule under Article 356, delays in granting assent to Bills under Article 200, summoning of Legislative Assembly sessions under Article 174, appointment of Vice-Chancellors in State Universities, and government formation in hung assemblies. Judicial decisions such as *S.R. Bommai v. Union of India*, *Rameshwar Prasad v. Union of India*, *Nabam Rebia v. Deputy Speaker, State of Tamil Nadu v. Governor of Tamil Nadu*, and *Shiv Sena v. Union of India* demonstrate both the misuse of discretionary powers and the judiciary's role in preserving constitutional balance. The paper argues that ambiguities surrounding the scope and limits of gubernatorial discretion have contributed significantly to constitutional deadlocks and allegations of partisan conduct. To address these concerns, it proposes reforms including greater consultation with State Governments in gubernatorial appointments, reconsideration of eligibility for reappointment, formulation of a clear framework governing Article 200, codification of constitutional conventions relating to government formation, and introduction of accountability measures requiring Governors to record reasons for exercising discretionary powers. Such reforms are essential to strengthen cooperative federalism, constitutional morality, and democratic governance in India.

Keywords: Constitution Law, Centre-State Relations, Governance, Federalism.

INTRODUCTION

Just as heart is vital to a human body, so is the office of the Governor to a federal democracy. Although the appointment of Governor is regarded as a unitary feature of the Indian Constitution, even then the office of Governor occupies a pivotal position in maintaining and strengthening India's federal structure. According to Article 153 of the Constitution, there shall be a Governor for each State, and one person may be appointed as Governor of two or more States. Further, under Article 154, the executive power of the State is vested in the Governor. So, who was envisioned as an impartial and neutral constitutional head while functioning as a vital link between Union and State has over the years embroiled itself in controversies with allegations of being an agent of the Centre. These allegations and accusations have given birth to constitutional deadlocks between Governor and elected State Government raising serious concerns for federalism, democratic accountability and balance of power between Union and State.

By virtue of Article 163, the Governor shall act on the aid and advice of the Council of Ministers headed by the Chief Minister. The decision of Hon'ble Supreme Court in **Shamsher Singh v. State of Punjab**¹ reaffirmed that the President and Governors are only ceremonial or titular heads of the executive. The real executive authority is exercised by the Council of Ministers. Consequently, wherever the Constitution uses the expression "satisfaction" of the President or the Governor, it refers not to their personal satisfaction but to the satisfaction of the Council of Ministers.

Nevertheless, the Constitution confers certain discretionary powers upon the Governor. It is primarily the exercise of these discretionary powers (such as inviting leader of a party to form the government in a hung assembly, reserving Bills for the consideration of the President, recommending President's Rule under Article 356 or calling for a floor test) that lead to conflicts between the Governor and the elected State Government. These conflicts are rampant when different political parties are in power at the Centre and in the States such as West Bengal, Tamil Nadu, Kerala, Jharkhand, and Punjab. The ambiguity surrounding the scope and limitations of these discretionary powers has become a major source of Governor–State Government conflicts in contemporary Indian federalism.

¹*Shamsher Singh vs. State of Punjab*, AIR 1974 SC 2192.

Historical Perspective of the Office of Governor in India

The roots of office of Governor can be traced to ancient Indian administration. During the Maurya Empire, provinces were administered by Kumaras or royal princes and Mahamatras representing central authority. Similarly, the Guptas had divided empires into provinces known as 'Bhuktis', which were administered by officials called Uparikas. Although these officials were not governors in the modern constitutional sense, they performed functions similar to provincial administrators.

The office of Governor as perceived in recent times emerged during the British rule. The Regulating Act 1773 created the post of Governor-General of Bengal, with Warren Hastings becoming the first holder of the office. Subsequently, the Pitt's India Act 1784 expanded the authority of the Governor-General.

A major transformation occurred through the Government of India Act 1858, enacted after the Revolt of 1857. The administration of India was transferred from the East India Company to the British Crown, and the Governor-General also became the Viceroy, representing the British monarch. Provincial governors increasingly functioned as agents of the central imperial government. The Government of India Act 1919 introduced Diarchy in the provinces. Although some subjects were transferred to Indian ministers, governors retained extensive discretionary and reserve powers.²

The most significant development came with the Government of India Act 1935. It introduced Provincial Autonomy, making elected provincial governments more responsible for administration. However, governors continued as constitutional heads and were granted special responsibilities and discretionary powers. The framers of the Indian Constitution largely adopted the framework of the Governor's office from the Government of India Act, 1935, while modifying it to suit a democratic and federal constitutional system.³

Glitches in Discretionary Powers

i. Recommending Imposition of President Rule under Article 356

The Hon'ble Supreme Court in *S. R. Bommai v. Union of India*⁴ had laid down judicial

² Pathak, Deependra Nath & Radha Ranjan, *An Introduction to Constitutional Law in India* (2025).

³ Ibid

⁴(1994) 3SCC1.

guidelines for imposition of President's Rule under Article 356. Despite clear judicial principles, there have been recurrent instances of departure from them. Any deviation or departure from these judicially established principles does not ordinarily attract any direct constitutional or legal sanctions. Lack of accountability undermines the binding force of judicial precedents.⁵ In this way, an environment of constitutional impunity is created thereby contributing to conflicts between Governor and State.

Rameshwar Prasad v. Union of India⁶ (popularly known as the Bihar Assembly Dissolution Case) is a landmark judgment on the misuse of Article 356. In a unique case of its own kind, the Bihar Legislative Assembly was dissolved even before its first meeting and President Rule was imposed in the State on the basis of the Governor's report that attempts were being made to form a government through unethical means. The Presidential Proclamation dated 7th March 2005 was challenged. The Hon'ble Supreme Court held the dissolution unconstitutional, observing that the Governor's report contained "fanciful assumptions" which could be "destructive to democracy"⁷.

A recent illustration of deviation can be seen in Union of India v. Harish Chandra Singh Rawat⁸ (2016) wherein Governor K K Paul where President's Rule was imposed on the ground that the elected state government had lost majority even before conducting a floor test. The Supreme Court subsequently directed a floor test, which demonstrated that the elected government continued to enjoy the confidence of the House, thereby reaffirming that legislative majority must ordinarily be determined on the Assembly floor.

ii. Delaying in granting assent to Bills

Article 200 of the Constitution deals with assent to Bills. When a Bill is presented for assent to the Governor, he may (i) assent to the Bill, (ii) withhold assent, (iii) return the Bill for reconsideration if it is not a Money Bill, and (iv) reserve the Bill for the consideration of the President. Among these, the expression "*withhold assent*" has been the most controversial and widely debated. This is because the Constitution does not clearly define the scope, grounds, or time frame within which the Governor must exercise its power to withhold assent. The net

⁵ Gulati, Jivantika & Radha Ranjan, "Cascading Role of Governance in Ensuring Judicial Activism in India", 19(2S) *Bhartiya Journal of Public Administration (BJPA)* (2022).

⁶(2006) 2SCC 1.

⁷Dr. J.N. Pandey, *Constitutional Law of India* 834 (57th ed., Central Law Agency, Allahabad, 2020).

⁸(2016) 7 SCC 754.

result is ambiguity, uncertainty and prolonged delays in the legislative process.

State of Tamil Nadu v. Governor of Tamil Nadu⁹ is a glaring example of this problem. In this case, the Hon'ble Supreme Court held that the Governor cannot indefinitely withhold assent to Bills passed by the State Legislature. The Court emphasized that Article 200 does not permit the Governor to create a '*pocket veto*' by keeping Bills pending for an unreasonable period. The judgment thus ensures that the constitutional process is not frustrated by gubernatorial inaction.

The Hon'ble Supreme Court in the subsequent Re Special Reference No. 1 of 2025 threw light on certain aspects of the aforesaid case. Courts cannot ordinarily prescribe timelines for the Governor or the President where the Constitution itself does not provide one. The doctrine of "deemed assent" or "deemed consent" is not part of the constitutional scheme of India. Therefore, a Bill does not automatically become law merely because a specified period has elapsed without action by the Governor. Nevertheless, constitutional authorities are expected to act within a reasonable time and in accordance with constitutional conventions and democratic principles.¹⁰

iii. Summoning the session of Legislative Assembly

Under Article 174 of the Constitution, the Governor shall from time to time summon the House or each House of the Legislative Assembly. He may also prorogue the House or either House. The use of the word 'shall' denotes that summoning the Legislature fall outside the ambit of discretionary power of the Governor. It stands as a matter of constitutional obligation. However, in contemporary times we have witnessed instances where Governors have delayed or refused to summon sessions of the Legislative Assembly despite the advice of the Council of Ministers.

In Nabam Rebia v. Deputy Speaker¹¹, the Governor of Arunachal Pradesh J P Rajkhowa advanced the session of the Legislative Assembly acting on his own without the aid and advice of the Council of Ministers. The Hon'ble Supreme Court held that the Governor had exceeded his constitutional authority under Article 174, as the power to summon, prorogue, or dissolve

⁹WP(Civil) No.1239 of 2023.

¹⁰ Ranjan, Radha, "Evolution of the Doctrine of Proportionality: Assessing its Scope and Ambit in Relation to the Right to Privacy in India", 10(1) *Indian Journal of Law and Human Behavior* 31–38 (2024).

¹¹(2016) 8 SCC 1.

the Assembly must ordinarily be exercised on the aid and advice of the Council of Ministers. Similarly, refusal to summon the immediate Budget session of Legislative Assembly by the Governor of Punjab Banwari Lal Purohit culminated in the case of *State of Punjab vs Principal Secretary to the Governor of Punjab and Another*¹². Additionally, he sat over four bills passed by the State Legislature pleading patent illegality of the Assembly session. Astonishingly, out of four, three were money bills. The Hon'ble Supreme Court ruled that the Governor having de facto authority is bound to act on the aid and advice of Council of Ministers. The Speaker has legal authority to reconvene the sitting of the Legislative Assembly once adjourned sine die without prorogation.

iv. Appointment of Vice-Chancellors (VCs) in State Universities

The Governor of a State generally acts as the ex-officio Chancellor of State Universities. Even in this role, the office of Governor is not free from friction with elected state government. In West Bengal, during 2023-24 a dispute arose between the State Government and the Governor C. V. Ananda Bose, regarding the extent of the Chancellor's authority and the procedure for appointment of Vice-Chancellors. The disagreement was ultimately resolved with judicial intervention. The Hon'ble Supreme Court devised a structured search-cum- selection process.

A notable controversy arose in Kerala in 2022 when Governor Arif Mohammad Khan, who in the capacity of Chancellor, called upon the Vice-Chancellors of nine State universities to resign following concerns subsequent to Hon'ble Supreme Court setting aside the appointment of Dr. M.S. Rajasree as VC of A.P.J Abdul Kalam Technological University since his appointment was not in compliance with UGC norms in *Professor (Dr.) Sreejith P.S. v. Dr. Rajasree M.S. & Others*¹³. Past experience has shown that whenever a conflict or deadlock arises between the Governor, acting as the Chancellor of a State University, and the university administration, its resolution often requires judicial intervention. Consequently, such disputes not only impede the smooth functioning of the university administration but also add to the burden of litigation before the Supreme Court.

v. Formation of government in case of hung assembly

Under Article 164 of the Constitution, the Governor appoints Chief Minister of a State.

¹²Writ Petition (Civil) No. 302 of 2023.

¹³ Writ Petition (Civil) Appeal Nos.7634–7635 of 2022.

Generally, the leader of majority party or coalition commanding a majority in the Legislative Assembly is appointed as Chief Minister in compliance with the constitutional conventions. However, the discretionary role of the Governor becomes relevant when the majority status is uncertain. It is in such situations that the possibility of arbitrary exercise of discretion arises. Although constitutional conventions, judicial guidelines, and floor tests operate as safeguards, experience has shown that they have not always been sufficient to eliminate allegations of partisan or arbitrary exercise of gubernatorial discretion.

There are plethora of examples demonstrating abuse of discretion of Governor in the formation of government. Recent example is from Maharashtra Government formation case (Shiv Sena and Ors. vs Union of India and Ors¹⁴). After 2019 Maharashtra Legislative Assembly Elections, alliance between BJP and Shiv Sena broke down over the issue of power-sharing and most importantly, over the post of CM. Devendra Fadnavis sworn in as Chief Minister amid political turmoil. The Hon'ble Supreme Court ordered a floor test. But before floor test could be conducted, the CM resigned. Subsequently, the alliance comprising of Shiv Sena, Nationalist Congress Party and Indian National Congress formed the state government. Another significant example comes from the state of Manipur wherein though Congress emerged as the single largest party that had won maximum seats, Governor Najma Heptulla, had invited BJP leader N. Biren Singh to form the government after securing post-poll support from regional parties.

Conclusion and Suggestions

The Constitution of India, 1950 envisage a federal structure with a strong trend towards centralization. Under the constitutional scheme, national unity and territorial independence have been preserved through a system of check and balance in the distribution of powers between the Union and States under Part XI. Against this backdrop lies the constitutional office of Governor under Article 153. In recent times, we are moving towards cooperative federalism. The strained relationship between Governor and respective state government may prove to be a major hurdle in this path. Amidst all this, neutrality and impartiality of the office of Governor still remain a matter of serious concern. No doubt, the office is often perceived to serve the agenda of the Union Government in ensuring political stability. Over the years, the office of Governor has gradually transformed from that of a neutral constitutional authority into an

¹⁴Writ Petition (Civil) No.1393 Of 2019.

active political party participant.

Here are few solutions that have been proposed to overcome these above mentioned challenges:-

- i. Reforms in Appointment of Governor- One of the major recommendations of the Sarkaria Commission (constituted in 1983) to evaluate Centre-State Relations recommended the appointment of a Governor should be made after effective consultation with the Chief Minister of the concerned State and that the office should remain politically neutral. Similar recommendation was reiterated by the Punchi Commission (constituted in 2007) which emphasized greater consultation and transparency in the appointment process in order to preserve the federal balance. However, these recommendations have not been fully implemented. and the appointment of Governors continues to remain largely within the discretion of the Union executive.
- ii. Eligibility for Re-appointment- The eligibility of a Governor for reappointment creates a cloud of speculation regarding his impartiality. There is a likelihood that the Governor may act in a manner that does not displease the Union Government. The independence and political neutrality expected of the office of the Governor seem to be compromised.
- iii. Guidelines for Article 200 -What is required is a clear constitutional and statutory framework governing the Governor's assent powers under Article 200. Such a framework should specify the circumstances in which assent may be withheld, the grounds on which a Bill may be reserved for the President, and the maximum time within which the Governor must act. The absence of such guidelines has resulted in uncertainty, delays, and recurring conflicts between Governors and elected State Governments. A well-defined framework would promote constitutional certainty, democratic accountability, and cooperative federalism.
- iv. Codification of Constitutional Conventions- If no single party has a majority, preference is given to the leader of a pre-poll alliance or coalition that enjoys majority support. In the absence of such an alliance, the Governor may invite the leader of the single largest party. Finally, if a majority is secured through a coalition formed after the elections, the leader of that coalition is called to form the government.

- v. Introduction of Accountable Measures- The introduction of accountable measures is essential to hold the Governor answerable for the exercise of discretionary powers, especially where such discretion is perceived to be arbitrary or lacking transparency. The Governor should be required to record written reasons for exercising discretionary powers, especially when withholding assent to Bills, reserving Bills for the President, or inviting a party to form the government.