



GOVERNOR – AN INDEPENDENT AUTHORITY OR AN AGENT TO CENTRAL GOVERNMENT

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The Governor of a state is of immense importance in our political system. It is considered as one of the pivotal parts of “**checks and balances**” that our democracy is proud of. Powers and functions bestowed upon the Governors and lieutenant-Governors of the States and Union territories of India are similar in nature to that of the President of India at Union level. Being de jure head of the state Government, all its executive actions are taken in the Governor's name. While the President of India is ‘elected’, the Governor is ‘selected’ by the existing central Government via imperative processes.

The Governor system is an age-old tradition. The Hindu emperors and sultans appointed Governors to the states, which were under their control. The powerful Governors enjoyed full autonomy in their states. They have to perform their duty of supplying army to their overlords during the wars. In real sense the Governors are bound to help their overlords during their hardship. Some of them rebelled against their rulers and declared themselves as real Sovereign in their regions. But we saw a change in the partnership of Governor after the advent of Britishers. By 1857, we had 3 presidencies like Bombay, Madras and

Bengal. The Indian Council's Act, 1862, provided some important powers to the Governors like granting of the portfolios to the Governors¹.

Appointment of the Governor

The appointment of Governor is an important task assigned to the President of India by the Constitution. Here, as we have already seen that the decision has been taken unanimously by the founding fathers of Constitution in the constituent Assembly that the Governor of a state should be appointed by the executive like in other quasi-federal states- Canada and Australia. The Governor of the state is appointed by the President of India². He is neither elected by the direct vote of the people nor by an indirect vote by a specially constituted electoral college as in the case of the President of India. He is a nominee of the Central Government.

In **Hargovind V. Raghukul**³, it has been held that “the office of the Governor of a state is not an employment under the Government of clause of Article 319 and therefore, a member of the State Public Service Commission can be appointed as the Governor. The office of the Governor is an independent office and is not under the control or subordinate to

¹Paranjape, N.V. *Indian Legal and Constitutional History*. Central Law Agency, 2015.

²Singh, M. P.V. *N. Shukla's Constitution of India (13th ed.)*. Lucknow: Eastern Book Company, 2017, p. 344.

³AIR, SC 1109 (1979).



the Government of India.” The appointment of Governor is an important task of President because no Governor should belong to any political party nor have partisan feelings. The President should appoint a person who can maintain integrity of the country. It would be dangerous to the political stability of the country. If the President appoints the Governor with the consultation or advice of others, he be the Prime Minister, the Chief Minister, the leader of the opposition or even the chief justice of the Supreme Court as personal and political overtones are likely to creep in such consultation and (or advice), although no fair proof or strict tests or considerations that should weigh with the President in the appointment of Governor be laid down, yet a few points may be suggested which may act as safeguards only:

(a) no person who has been a minister or a Chief Minister either in the Union or in the state should be appointed as Governor,

(b) no civil servant who is in service or is superannuated and has been dragged in political controversy of national importance should be appointed as Governor,

(c) a person to be appointed as Governor should have a fair and working knowledge of the Constitution of India,

(d) as far as possible a person who has been in civil service or in active national politics should not be appointed as Governor and the choice must fall on persons who are social workers, jurists, economists, educationists, political thinkers (not activists), lawyers and retired High Court Judges.

Unfortunately, these suggestions are thrown in dustbin by the Presidents. Almost all Presidents till the recent times

appointed the political party members who belonged to the ruling party at the Centre. This act should be discarded in future to prevent Governors from the interference in the internal affairs of the parties in the states.

Tenure of the Governor

In the normal circumstances, the Governor holds office for a term office of five years which will be counted from the day of entering in his office as Governor. The day of entering is the day on which the Governor undertakes or subscribes an oath which is a condition precedent to entering into the office. But in the exceptional circumstances, he may resign or may be removed from his office before the completion of five years. Regarding the tenure of the office of the Governor, Article 156 of the Constitution provides that:

- i) The Governor shall hold office during the pleasure of the President.
- ii) The Governor may, by writing under his hand addressed to the President, resign his office.
- iii) Subject to the foregoing provisions of this Article, a Governor shall hold office for a term of five years from the date on which he enters upon his office⁴.

Provided that a Governor shall, notwithstanding the expiration of his term, continues to hold office until his successor enters upon his office. Or in other words, Governor stands in his office even after the expiration of his term of five years, till his successor takes or subscribes an oath before entering in his office as Governor. Only the President has the power to terminate the Governor at any time from his office. The use of words “during the pleasure of the President” in Article 156 of the Constitution denotes

⁴ B.P.Singhal vs Union of India & others 2010.



that the Governor can be terminated at any time when the President withdraws his pleasure. This Article does not mention any ground on which the pleasure of the President may be withdrawn. Hence, the power of the President regarding removal of the Governor is extreme.⁵

At the time of discussion on the Article 132 of the Draft Constitution which was related to the tenure of office of the Governor, some members in the Constituent Assembly were not in favour of leaving the tenure of office of the Governor on the mercy of the President. They thought that if the Governor holds office at the pleasure of the President, then his tenure would be uncertain. He would be removed from the office at any time. Prof. K.T. Shah, Hon'ble member of the Constituent Assembly said, "I just cannot understand this". He wanted to insert the words "and shall during the term be irremovable from his office", after the word "office" in the Draft Article 132. If the words were inserted, the Draft Article 132 would read as "The Governor shall hold office for a term of five years from the date on which he enters upon his office and shall during that term be irremovable from his office" but his amendment was not accepted by the Constituent Assembly.

The High Court of Rajasthan, in **Surya Narain Choudhary vs Union of India**,⁶ has held that the five years term provided to a Governor under Article 156 (3) is not mandatory. Clause (3) of Article 156 is subject to clause (1) of this Article. This means that the five-year term is subject to the exercise of pleasure by the President. Thus, it lies within the power

of the President to terminate the term of the Office of the Governor at his pleasure. Court also held that it was not necessary to specifically mention in the order that it was issued in exercise of the power "at the pleasure of the President". The President must be deemed to have exercised this power under Article 156, when the order of removal is duly signed by him. For the removal of the Governor, the Constitution does not provide the system of impeachment as it is provided for the removal of the President. About the removal of the Governor, H.M Seervai⁷ stated in his book that Governors hold office during the pleasure of President and can be removed by him at any time during their term of office. It is not necessary to provide for the removal of Governors by impeachment or by a process analogous to impeachment. Pleasure of the President has weakened the position of the Office of the Governor as after 42nd amendment, the President is bound by the decision of Council of Ministers in matter of Article 156. And he is increasingly being subject to the whims and fancies of the Central Government.

The Central Government has many times shortened the tenure of a Governor for political reasons. When the Government at Centre changes, the removal or shifting of Governors of State has become a normal practice and this practice needs to be changed. There are many examples of removal or transfer of Governors only on political considerations. In October, 1980, the then Tamil Nadu Governor, Prabhudas Patwari was dismissed demonstrating that the President's pleasure under Article 156(1) can be used by the Prime Minister to dismiss any

⁵Supranote. 10

⁶ AIR, 1982 Raj 1.

⁷Seervai, H. M. *Constitutional Law of India* (4th ed.). Delhi: Universal Law Publishing, 2015, p. 2022.



Governor for political reasons and without assigning any cause. In 1981, the then Governor of Rajasthan, Sh. Raghulal Tilak was dismissed from his office.⁸ In December 1989, on the advice of the Central Government, the President asked to all the Governors to tender their resignations. The main reason behind it was only that all those Governors were appointed by the previous Government at the Centre. In April 1992, the Governor of Nagaland, M.M. Thomas was dismissed because he dissolved the State Legislative Assembly on the advice of the defeated Chief Minister, without consulting the Centre and the Central Government had not accepted this decision. The post of such a high constitutional validity has become a puppet in the hands of the Central Government under Article 156 (1).

The removal or shifting of Governors in States begins with the change of Government in the Centre. Every time when a different political party comes in power in the Centre calls for change of Governor under Article 156(1).

In 2004, Governors of four States, namely Babu Parmanand (Haryana), Kidar Nath Sahani (Goa), Kailashpati Mishra (Gujarat) and Vishnu Kant Shastri (Uttar Pradesh) were dismissed from their respective States by the UPA Government headed by Dr. Manmohan Singh (which had assumed office after March-April Lok Sabha Elections, 2004) without giving any valid reason except for that “the ideologies of respective Governors were different from that of the Central Government.” They all were appointed during the tenure of previous Government of United Progressive Alliance (UPA).⁹ But in 2014, the NDA came into power in the

Centre, then Modi's Government dismissed the UPA appointed Governors. This is the list of the Governors who were dismissed during Modi's Term¹⁰:

1. Pondicherry Governor, Virendra Kataria was sacked.
2. Mizoram Governor, Vakkom B. Purushothaman resigned because he was unhappy with his transfer to Nagaland.
3. Kamla Beniwal, the former Governor of Gujarat later transferred to Mizoram was asked to step down from her post.
4. B.L. Joshi of Uttar Pradesh resigned from his post.
5. Shekhar Dutt of Chhattisgarh resigned from his post.
6. Ashwani Kumar of Nagaland resigned from his post.
7. B.V. Wanchoo of Goa resigned from his post.
8. M K Narayan of West Bengal resigned from his post.

President appoints and removes the Governor, who is recommended by the Central Government. Constitution does not provide particular guidelines for the President for the use of his power under Article 156(1). Sarkaria Commission has given some recommendation regarding removal of the Governor, which are as follows:

- i) The Governor's tenure of five years in a State should not be disturbed except very rarely and that too, for some extremely compelling reasons.
- ii) where the President is satisfied that in the interest of the security of the State, it is not expedient to do so, the Governor whose tenure is proposed to

⁸www.rediff.com

⁹ *ibid.*

¹⁰The Hindu Newspaper, August 08, 2014.



be terminated before the expiry of the normal term of five years, should be informally apprised of the grounds of the proposed action and afforded a reasonable opportunity for showing cause against it. It is desirable that the President (in effect, the Union Council of Ministers) should get the explanation, if any, submitted by the Governor against his proposed removal from office, examined by an advisory group consisting of the Vice-President of India and the Speaker of the Lok Sabha or a retired Chief Justice of India. After receiving the recommendation of this group, the President may pass such orders in the case as he may deem fit.

iii) to the Government of India. In **Hargovind Pant vs Dr. Raghukul Tilak**,¹¹ the court held that it is no doubt true that when, before expiry of the normal term of five years, a Governor resigns or is appointed as Governor in another State or has his tenure terminated, the Union Government may lay a statement before both Houses of Parliament explaining the circumstances leading to the ending of the tenure. Where a Governor has been given an opportunity to show cause against the premature termination of his tenure, the statement may also include the explanation given by him in reply. This procedure would strengthen the control of Parliament and the Union Executive's accountability to it.

Punchhi Commission also criticizes arbitrary dismissal of Governors, saying, "the practice of treating Governors as political football must stop". It has suggested that there

should be critical changes in the role of the Governor including fixed five-year tenure as well as their removal only through impeachment by the State Assembly.

Governor as the Agent of the Centre

The Governor of a State plays a multifaceted role. In the normal circumstances, he acts as a vital link between the Central and the State Government. Under the Constitution, Governor is expected to play a double role, as the head of the State and as the representative of the Centre. The Central Government has been kept strong in the Indian federal set up by providing more powers under the Constitution. Moreover, the procedure of appointment and the removal of the Governor, also make the Centre strong because his term of office is not secure and he acts only on the directions of the Centre.

The founding fathers of our Constitution made the Central Government strong so that it would be able to put a check on the disintegrating forces and can act to safeguard the sovereignty, integrity and stability of the Country. The Central Government has many over-riding powers over the State Government. It has been given a dominant voice in the affairs of the State.

Article 160 of the Constitution states that the President may confer on a Governor function in any contingency not provided in the Constitution. Article 164(1) of the Constitution provides that the Chief Minister shall be appointed by the Governor. Article 200 of the Constitution states that when a Bill has been passed either by both the Houses or the House as the case may be, it shall be presented to the Governor and he may reserve it for the consideration of the President. In the proclamation of the

¹¹ (1979) 3 SCC 458.



emergency in the State, the report of the Governor about the functioning of the constitutional machinery of the State plays an important role, as Article 356(1) provides that, "if the President on the receipt of report from the Governor 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." Article 167 of the Constitution provides that it is the obligation of the Chief Minister to keep the Governor informed about the affairs of the State so that the Governor may inform about it to the President. Article 257 of the Constitution provides that the executive power of the State shall be so exercised as not to prejudice the exercise of the executive power of the Union.

It is the constitutional obligation of the Centre 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 the Constitution.¹² In order to the fulfilment of these obligations, it is necessary that the Centre should have its own representative in each State, who has a duty to defend the Constitution, protect democracy, promote national objectives and national integration and also preserve national standards of public administration.¹³ It is the Governor by whom the Central Government completes its constitutional obligation. Hence, Governor is the representative of the Centre in the State. Being the appointee of the Central Government, in exceptional circumstances the Governor becomes the

agent of the Centre and Centre misuses the discretionary powers of the Governor for the fulfilment of its political goals. And at the same time, it appears the post of the Governor should be abolished. Because at this time he does not act as the head of the State and for the welfare of the State but only as a puppet in the hands of the Centre for providing political benefit to the party in command at the Centre.

K. V. Rao says that Governor is nominated by the President. And it is this thing, which is most obnoxious. He says, "today at the root of all troubles is the simple fact that the head of the State is neither chosen by that state nor is he responsible to it or removable. By the very method of appointment and removal the Governor becomes subordinate to the President."¹⁴

The recent example where the Governor acted upon the directions of the Centre or Centre used the office of the Governor for political consideration is, when in Arunachal Pradesh the Congress-led Government in the state had led to the demand for impeaching the Speaker of the Legislative Assembly. The Governor, J P Rajkhowa, decided, without the aid and advice of the Council of Ministers headed by the Chief Minister, to advance the session of the Assembly by a month so that the impeachment motion could be discussed. Governor sent a message to the House to take up 'Resolution for removal of the Speaker' as the first item on the agenda. The Assembly voted in favour of impeaching the speaker. Speaker, who was from the ruling party, disqualified the rebels while facing a motion for his removal. A no-confidence motion was

¹²Bakshi, P.M. *The Constitution of India* (14th ed.). Universal Law Publishing, 1 January 2017.

¹³ *ibid.*

¹⁴ Goyal, Rajni. "The Governor: Constitutional Position and Political Reality", *The Indian Journal of Political Science*, Vol. 53, 1992, p. 520.



adopted with the help of some dissident MLAs. President imposed President's rule in Arunachal Pradesh even before a mandatory floor test could establish conclusively that the Government had lost its majority. Five months later, the Constitution Bench of the Supreme Court unanimously quashed Arunachal Pradesh Governor's order to advance the Assembly session.

Describing the order and the Governor's other actions as unconstitutional, court ordered the restoration of the ousted Congress Government led by Nabam Tuki in the North-Eastern state. The Supreme Court laid down three propositions in Arunachal Pradesh case – first, the Governor has no power to unilaterally summon an Assembly session unless the Government has, in his view, lost the majority; second, he cannot take steps relating to disqualification of the Speaker; and third, he is barred from unilaterally sending messages to the Assembly on any matter. The Governor cannot require the Speaker to discharge his functions in the manner he considers appropriate. The underlying justification for each of these is the constitutional role of the Governor as the titular head of the State executive. A Governor cannot use his discretionary powers to run a parallel administration or a diarchy challenging the existence of an elected State Government. In case a remarkable situation arises in the political spectrum of the State, the Governor's duty is only to report to the President and wait for a decision, the Supreme Court held. The Supreme Court also questioned the advancing of the Assembly session by the Arunachal Pradesh Governor on his own and said this decision would not be a valid exercise of discretionary power if there was no Constitutional objective behind it. A Governor's discretion under

Article 163 to act without the aid and advice of the Cabinet is very narrow and limited.

A Governor can act in his own discretion if his actions are justified by or under the Constitution but the Governor's exercise of this discretion would be open to challenge where it can be shown to be perverse, capricious, fallacious, and extraneous or for a motivated consideration. Governor is not an all-pervading super constitutional authority. A Governor is not an elected representative, but only an executive nominee whose powers flow from the advice of the Cabinet. His tenure depends on the pleasure of the President.

Using discretionary powers to summon or dissolve Assembly sessions without the aid and advice of the Chief Minister and his Cabinet is unconstitutional. The Governor is not an ombudsman for the Legislature or the Speaker's mentor. The Governor cannot require the Speaker to discharge his functions in the manner he considers constitutionally appropriate. The court held that what happens within the four walls of a political party is none of the Governor's concern. The Governor must remain aloof from any disagreement, discontent or dissension, within parties. The Governor must keep clear of any political horse-trading, and even unsavoury political manipulations. There is no justification for a Governor to be disturbed about proceedings in connection with the disqualification of MLAs under the Tenth Schedule because the Governor has no role therein. Any action taken by the Governor, based on the proceedings being carried on under the Tenth Schedule, would be a constitutional impropriety.

Powers and Functions of Governor



As a Head of the Government of the state, the Governor has to perform several functions though he is a titular head of a state like the President of India. Here the scholars of the Constitutional Law are concerned with the discretionary powers but not general powers like Legislative, executive and judicial powers.

The Constitution of India granted some discretionary powers like appointment of Chief Minister, dissolving Legislative Assembly. Reserving a bill¹⁵ to the President along with the other powers like summoning and prorogue the Assembly issuing the ordinance executive powers and powers of pardoning.

Discretionary powers

Under the Constitution the Governor is to act at his discretion in certain matters. Answering this question, the courts have held very rightly on several occasions as:

“All the powers exercisable by the Governor can be exercised on the advice of the ministers except in so far as the Constitution expressly or perhaps by necessary implication says that he can exercise those powers in his individual discretion”¹⁶.

There are provisions in the Constitution, which explicitly state that the Governor is to exercise his powers and functions in his individual discretion and independently of his council of ministers¹⁷. These express provisions, which require the Governor to act at his discretion, are Article 239 (2) and paras 9 (2) and 19 of the 6th schedule of the Constitution. Article 239 (1) very clearly provides that

the Governor, when appointed as the administrator of an adjoining Union territory also shall exercise his functions as such administrator independently of his council of ministers. Similarly, para 9 (2) of the 6th schedule also gives discretionary power to the Governor of Assam to determine the shares of royalties from licenses or leases for prospecting or extracting minerals in an autonomous district to be made over the district council in a tribal area of Assam state. And the Governor's decision in his discretion shall be final. There are specific articles 371 and 371 A, which impose special responsibility on the Governors of Andhra Pradesh, Maharashtra, Gujarat and Nagaland for specific purposes, also came under this category.

However, by imposing special responsibility on the Governor, these articles 371 and 371 A, authorize the President to give directions to the Governor to implement the specific purposes of these articles and in case of non-compliance to take action under Article 365. thus, we can draw an inference that the Governor should exercise his own discretion and, except in these situations, the Governor should always act on the advice of his council of ministers.

Implied Discretionary Powers

The Constitution provides discretionary powers to the Governor, not directly but by necessary implications. The Constitution envisages a great scope of discretion for the Governor under Article 163 (1) and (2), which was

¹⁵Mehta, S. M. *A Commentary on Indian Constitutional Law* (2nd ed.). Deep & Deep, 1990, p.303.

¹⁶Seervai, H. M. and N. M. Tripathi. *Constitutional Law of India a critical commentary* (2nd ed.). Bombay, 1926, p. 1047.

¹⁷Baig, M. P. A. “Governor's Role and Responsibility in exercising his Discretionary Powers”. *Law Journal*, Indian Law Institute, 1994, p. 151.



considered necessary for keeping the centre's eye on state functioning. Hence, situations may arise in which the Governor may actually have to exercise his discretion.

These situations are:

1. Regarding the appointment of the Chief Minister.
2. Regarding the dissolving of state Legislative Assembly.
3. Regarding the dismissing of a ministry.
4. Regarding the reserving of a bill for the consideration of the President, and
5. Regarding the Governor's report for President's rule in the states.

Thus, these constitutional powers of the Governor are of significant use in the context of Centre-State relations. In the sphere in which he is required by the Constitution to exercise his discretion, it is obvious, that it is his discretion and not that of any other authority and, therefore, his discretion, cannot be controlled or interfered with even by the Centre.

This is why the Governor's independence in exercising his discretionary powers is indispensable to a state's Autonomy.

Power to Appoint the Chief Minister

The manner, in which Governors have hitherto used the power of appointing the Chief Minister, is no less controversial. The whole controversy arose because the Constitution is silent on this point. What should a Governor do when no political party has a clear majority in the Legislative Assembly?

It will be worthwhile to mention that under Government of India Act, 1935, the Governor was empowered to exercise his discretion in the appointment of the council of ministers. But such a discretionary power has not been provided to the Governor under the present Constitution. However, Article 144 of the draft Constitution, initially provided

power for the Governor to exercise his discretion in the selection of the council of ministers.

Thus, a Constitution alone is never a guarantee of good Government how so ever better framed and better phrased, it may be the real success of a Constitution, in fact, it absolutely depends on the quality of the people who happen to work it and less on the words on it. Keeping in view these basic postulates in mind the present study is conducted on an aspect of Indian Constitution which is more or practical politics and less of constitutional law. But it is the duty of a Constitutional Lawyer to help the politicians to adopt a principled approach, which our Constitution enjoins upon them. "The law will state the practice", says Jennings, "and the practice will follow the law".

Article 164 (1) 21 of the Constitution of India needs

"The Chief Minister shall be appointed by the Governor and the other ministers shall be appointed by the Governor and the other ministers shall be appointed by the Governor on the advice of the Chief Minister".

Apparently, the words in clause (1) of Article 164 gives an unregulated power to the Governor to appoint any one as the Chief Minister and thus the exercise of Governor's pleasure under Article 164 (1) cannot be fettered by any condition or restriction. Formally, it is the discretion of the Governor to exercise his personal judgement in selecting the Chief Minister but it is conditioned by an essential feature, the Parliamentary form of Government namely, the collective responsibility of the council of ministers to the State Assembly. Thus, only such a person can be appointed as Chief Minister, who carries or can carry with him the majority in the Legislative Assembly.



Theoretically, it seems that the Governor can rely upon his personal choice only in exceptional cases when it is not clear who among the several claimants of the office of the Chief Minister is having the majority support with him, and the exercise of him, discretion cannot be called in question in writ proceedings, but if this discretion in appointing a Chief Minister is exercised in such a way that the leader of the party or parties commanding majority in Legislative Assembly doesn't appoint a Chief Minister, the Governor would definitely be violating the spirit of the Constitution, if not the letter of the Constitution. Furthermore, if a Chief Minister is appointed who does not command majority in the house then he is bound to fail in the house. Hence, it becomes clear that the Governor has no discretion in the appointment of the Chief Minister in case where a party has clear majority in the house. In such case, he is bound to call upon the leader of the majority party to form the Government.

The British conventions, which form the pivot of parliamentary form of Government, may also provide useful clues in this regard. Ivor Jennings has expressed his opinion for such a fluid situation when no party obtained a majority in the election, then only two options are left for the queen¹⁸.

i) The formation of a coalition Government with the support of the opposition.

ii) To invite the leader of the largest party to form the Government.

In case a member of different parties has returned to the house and none of them has got an absolute majority in the house, what should the Governor

do? Should he invite the leader of the largest single party to form the Government, or should he afford an opportunity to other smaller groups to form the Government? Three different views may be expressed in such a situation:

i) The Governor should try to appoint a person who commands a stable majority in the house.

ii) The leader of the largest single party in the house should be invited to form the Government irrespective of the fact whether such a party commands a stable majority in the house or not.

iii) If the party in power fails to secure a majority in the newly elected house, the leader of that party should not be invited to form Government irrespective of the fact that the party is the largest single party in the newly elected house.

The Governor's committee has recorded the view that in such a situation the leader of the largest single party has no absolute right to be appointed as the Chief Ministers. The committee further records that the relevant test is not the size of a party but its ability to command the support of the majority in the legislature.

Eminent Jurists like A. K. Sarkar, P. B. Gajendragadhkar and Mehar Chand Mohajan have refuted the second view on the plea that the Governor acting upon the second view would have formed a Government of a minority. That could be title and also against the basic concepts of the Constitution. They all favoured the first view that the person who can ensure a stable Government, should be invited by the Governor by late M. C. Setalvad when

¹⁸Bakshi, P. M. *Constitution of India* (14th ed.). Universal Law Publishing, Article 164, 1 January 2017.



he said: "If the party in power poised to attain a majority, the Governor should treat it as a popular rejection and call upon the leader of the opposition to form a ministry. In the event of his failure to do so the leader of the largest political party should be invited"¹⁹.

These views of the Governor's committee and eminent constitutional experts deserve attention. But our party experience may otherwise, that most of the Governors had invited the leader of the largest single party to form the Government during the preceding three decades.

Power to Dissolve State Assemblies

Under Article 174 (2) (b), the Governor has absolutely unrestricted power to dissolve the Legislative Assembly of the state. If the Governor has reason to believe that the Legislative Assembly is not representing the electorate, he has every constitutional right to dissolve it. The majority in the Legislative Assembly, is the creation of the electorate, and the members by their unilateral act of defection change this majority into minority and turn a minority into majority, which clearly amounts to a breach of the electorate's confidence and betrayal of their trust, which is clearly a violation of the fundamental principles of representative democracy. Thus, the Governor can dissolve a Legislative Assembly, which has changed its character in this way.

Unfortunately, the Governor has very often acted not as representatives of the centre but virtually as a functionary of the ruling party at the centre in exercising their power to dissolve state Assembly

under Article 174 (2) (b)²⁰, to prove this, two points deserve special attention here. First, whenever a Congress Government or a Government supported by it from outside or a Government in which it was a major partner, has fallen or has been about to fall, the assemblies, instead of being suspended have been dissolved under Article 174 (2) (b) as in Travancore-Cochin (1970), West Bengal and Bihar (1971), or under Article 356 as in Andhra (1954), Pondicherry (1968), West Bengal (1965) and (1971), Manipur (1969) and Orissa (1973), unless the collapse of Government happened soon after election as in Haryana, Uttar Pradesh and Madhya Pradesh (1967) and Bihar (1969). In none of these cases were the opposition parties, given an opportunity by the Governors to try and form alternative Government.

Secondly, whenever, a recommendation for dissolution under Article 174 (2)(b) or under Article 356 was made by non-congress outgoing Chief Ministers, it was rejected in all cases where the congress was keen on forming the Government. To cite the examples are of Rao Birandra Singh in Haryana and Saradar Gurman Singh in Punjab (1967), Charan Singh in Uttar Pradesh (1968), Bhola Paswan Sastri in Bihar (1971). All these examples point out the disturbing trend in the role of Governor and make quite an impressive indictment.

Power to Dismiss a Ministry

According to Article 164 (1) of the Constitution, which reads, "the ministers should hold office during the pleasure of the Governor." Thus, the question arises, does this constitutionally prescribed pleasure confer upon the Governor

¹⁹ RAJNI GOYAL. *The Indian Journal of Political Science* Vol. 53, Published by: Indian Political Science Association, No. 4 (Oct. - Dec. 1992), pp. 505-523.

²⁰ A Textbook on British Constitution, p. 95.



discretionary power to dismiss the ministers arbitrarily on subjective considerations? In an answer to this question it may be said that in dismissing a minister (including the Chief Minister), the Governor cannot withdraw his pleasure with unfettered discretion. The view of the Calcutta High Court²¹ that the Governor can use his unfettered discretion to dismiss the council of ministers is also not vary sound view because this view is not substantiated by the framers of the Constitution. B. R. Ambedkar, who while speaking in the constituent Assembly, said: "The position of the Governor is exactly the same as the position of the President".

It may, however, be noted here, "the Governor cannot dismiss a ministry which enjoys the confidence of lower house (though) he can get it dismissed by the President for violating the Constitution under Article 356, Article 164 (2) and Article 73 (3) require that the council of ministers shall be collectively responsible to the lower house are the backbone of parliamentary form of Government. This obviously means that though council of ministers is appointed by the President or the Governor as the case may be and holds office during their pleasure yet this pleasure is actually vested in the lower house of the parliament or the state legislature. This is so because if the Governor is permitted to dismiss the popular Government on his subjective satisfaction it would "cut at the root of parliamentary Government to which our country is fortunately committed".

However, the pleasure of the Governor to dismiss an individual minister means the pleasure of the chief

minister because when the Chief Minister asks a particular minister to resign and if he does not resign, then he can advise the Governor to dismiss him. But this practice has not always been followed in all cases and there are examples where the Governor has refused to dismiss the minister's in spite of the recommendations of the Chief Minister, which is a disturbing trend in the role of the Governor. Hence, it is submitted that so long as the Chief Minister is found capable of obtaining support of the majority of the house the Governor should continue to follow the advice of the chief minister to dismiss a minister.

Power to Reserve a bill for President's Consideration

Every bill passed by the state legislature is presented to the Governor for his assent under Article 200 of the Constitution. The Governor has discretionary power to reserve the bill for the consideration of the President²². In the exercise of this discretionary power the Governor has to play a constructive role in Centre-State relations. In the interest of amicable centre-state relations, the Governor should exercise his discretion only in exceptional and warranted cases. In addition to this, there is also certain circumstance under which the Constitution requires Presidential assent before a bill passed by the state legislature becomes law. Once a bill is so reserved the President may either give his assent or withhold it or he may direct the Governor that the bill be placed before the state legislature for reconsideration in accordance with his message to the house. But there is no time limit provided for Presidential Veto and the President can Veto any bill that is referred to him for

²¹ Singh, D. K. *The Constitutional Law of India*, Lucknow: Eastern book company, 1975, p. 364.

²² Basu, D. D. *Constitutional Law of India*. Kamal Law House, 2019.



assent and, he need not give any reasons for exercising his Veto. There have been instances when the state bills have been sent back without Presidential assent. The fact also remains that some of the state bills had continued to await the assent of the President for 12 years.

A study of 119 bills for the years 1964 to 1966 conducted by the Indian law institute found that the centre while communicating assent has often tended to dictate its policies to the states, though actual assent has been refused only in few cases.

Hence, it is suggested that the Constitution should be amended whereby bills sent by the Governor to the President should be deemed to have been passed, if the President neither rejects nor gives his assent to them within a period of three to six months.

In conclusion the most important theory about the powers of the Governor is the pleasure theory. The ministry continues in the office till it enjoys the pleasure of Governor. It should be based on conventions but the theory is strongly opposed in the constituent Assembly by number of members of who participated in the debates on the powers of Governor.

It was pointed out in the constituent Assembly while discussing Article 144 (now Article 164) that conventions would develop and the Governor will be entitled to dismiss a ministry only when it has lost, the confidence of the Legislative Assembly. But the sole judge of this is the Governor and hence he has very great power in this regard because as K.T. Shah in the constituent Assembly said that if there is one way of observing the law, there may be hundred ways of evading it. Speaking against the view that conventions and constitutional practice would restrict and guide the Governor in exercising his pleasure, Mohammad Ismail Saheb,

Muslim League, member from Madras, said that “Conventions are resorted to when we are not clear about any matter or any position and when we want to learn things by experience, ...” we need not in this matter wait for conventions to grow N.V. Pataskar, another member of the constituent Assembly, speaking against the pleasure, doctrine said that it was not necessary and was derogatory to the position of the Chief Minister and the ministers. Majority of the members in the constituent Assembly spoke against the pleasure theory. The consensus in the constituent Assembly was that the Chief Minister and his ministers should hold office till they command the confidence of the majority of the house.