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Discretionary Powers of Governors under the Indian Constitution

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The position of the governor under the Constitution of India is in a great part the continuation of the provincial governors under the British Raj, in fact, many of the reserve powers of governors were outlined originally in the Government of India Act 1935. The framers of the Constitution envisioned the role of the governor through a dual lens. On the one hand, he would be the ceremonial head of the state administration, similar to the president at the centre; on the other hand, he would be the centre's representative in the state. It is to aid him in fulfilling his latter role that the governor has been conferred with wide-ranging discretionary powers by the constitution, these include but are not limited to reserving a bill for central assent, keeping a bill pending for assent, dissolution of the Legislative assembly and recommending imposition of President's Rule. It is a well-established fact now that for much of the period since the promulgation of the constitution, the discretionary powers of the governor have been abused by various central governments to impose their will upon the states. The governors have functioned in large part as the centre's representatives only and have neglected the duality of their role. These indiscretions stem largely from the appointment procedure of governors, as they are appointed and dismissed by the president. Hence, through this research paper, the authors have attempted to trace the evolution of this office, identify the various discretionary powers and their use or misuse, analyse these powers in light of judicial decisions and finally suggest some steps to reform this office.

Keywords: *governor, discretionary powers, constitution of India, article 163, federalism.*

INTRODUCTION AND GENERAL BACKGROUND

Governor's Discretion under the British Raj - The governor's position predates independence and played a significant role in British colonial administration at the province level. Under the Government of India Acts of 1919 and 1935, the governor's provinces were also known as the governor's provinces. Before independence, governors had a great deal of authority over matters transferred to the provinces. They were solely answerable to the governor-general, who in turn reported to the British Parliament through the secretary of state.[1]

The first significant step towards provincial autonomy was taken with the Governance of India Act 1919, sometimes referred to as the Montagu–Chelmsford reform. It established a system of 'diarchy,' which was a primitive type of responsible governance in the provinces. There were two types of legislative topics that were delegated to the provinces: 'transferred' and 'reserved'. The governor-in-council was to oversee the reserved subjects, which included law and order, justice, and natural resources, and the governor was to oversee transferred subjects, which included health, education, and municipal and local governance, with assistance and advice from the council of ministers. However, even in the case of transferred subjects, the former governor was still empowered to overrule the decisions made by his council of ministers.

The devolution of authority to the provinces was enhanced by the Government of India Act 1935 over the 1919 Act. It increased their level of autonomy, granted elected provincial governments more authority, and included plans for the central construction of a federal government. The governor of a province served as the actual head of the executive until the 1935 Act. The 1935 Act gave governor's provinces a more constrained kind of accountable administration. It provided for the assistance and counsel of a council of ministers to assist the governor in carrying out his duties. The governor's powers were to be divided into three categories:

- Exclusive jurisdiction or special responsibilities;
- Power to be exercised at his own discretion; and

[1] Austin Granville, *Working a Democratic Constitution: The Indian Experience* (Oxford University Press 1990)

- Power is to be exercised on the advice of the Council of Ministers, with the option to override the Council of Ministers' decisions.

Legislative and budgetary authority were also granted to governors. Even though the 1935 Act gave the responsible government greater authority than the 1919 Act did, the governor still had ultimate authority under the terms of the constitution.[2]

Debates in the Constituent Assembly - A variety of alternatives are presented, most of which are influenced by the Act of 1935, which we worked with in order to imagine foundational legislation for independent India that would direct state activities forever. The Constituent Assembly decided against directly elected governors with comparable impeachment procedures and in favour of the president appointing governors (on the recommendation of his Council of Ministers). In addition, the members thought that the union's fragility was more significant than the idea that an elected governor would work against the state's responsible governance.[3]

Despite protests, the Constituent Assembly decided to preserve Article 143 of the Draft Constitution, which eventually became Article 163 of the Constitution, and to allow the governors to use their discretion with personal pleasure. It was intended for governors to serve as a liaison between the federal government and the states in addition to carrying out the duties of the head of state. They were to serve as the centre's agents as well. This is the way the Indian Constitution's federalism operates. The governors are granted unrestricted authority to intervene in state government matters despite the president being dehumanised. This is because they are the core nominees. It was envisioned that the governors who would stand out for their accomplishments would be above party politics and refrain from interfering with the state's daily operations. As we've seen, this account's record is seriously tarnished.[4]

[2] Government of India Act 1935, s 50
[3] P M Bakshi, *The Constitution of India* (University Law Publishing 2014)
[4] Atul Kumar Tiwari, 'A Chequered History of Governors' Discretionary Powers under Article 163' (2017) 63(3) Indian Journal of Public Administration <http://dx.doi.org/10.1177/0019556117720592> accessed 03 October 2024

Sri H. V Kamath moved to remove clause (1) of Article 143, which stated, 'except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion,' on June 1, 1949, in the Constituent Assembly because he opposed giving the governors additional autonomy versus the president has over his ministers.[5] T. Krishnamachari disagreed, saying that this was the result of a misunderstanding. Except insofar as the use of his discretion is governed by those Articles in the Constitution in which he is expressly permitted to act in his discretion, the governor generally must follow the advice of his ministers as long as the Constitution contains Articles that follow and urge him to act at his discretion, covering any situation when he deviates from standard procedure.[6]

While Brajeshwar Prasad advocated for the governor to have the same authority as the British government, even though this would be undemocratic, Dr. P. S. Deshmukh wanted the governor to have the authority to preside over cabinet sessions. Mahavir Tyagi's suggestion was right on the money. He desired further authority for the governors, who act as the centre's representative or, more accurately, as the agency to ensure that its policies are implemented. The Governor shall continue to serve as the protector of both the Constitution and Central policy. Alladi Krishnaswami Iyer adopted a reasonable stance in these circumstances, believing that this Article's wording is perfectly appropriate as long as the Constitution contains provisions allowing the governor to act independently and, under certain conditions, to overrule the Cabinet or refer to the president.[7]

Pandit Thakur Das Bhargava supported keeping Article 143, which views the governor as a friend, philosopher, and leader of the ministry. He would carry out certain duties in accordance with unwritten customs and fulfil others as specifically stipulated by this Constitution. Sri Krishna Chandra Sharma backed the emergency powers granted by Article 188 and said that the president may only carry out his duties for the good governance of the nation via the governor alone. He continued by saying it is completely incorrect to describe someone like him as just a robot, a dummy, or a dignitary devoid of abilities. Insofar as our idea of a constitutional

[5] 'Constituent Assembly Debates: Constituent Assembly Debates On 10 September, 1949 Part Iii' (*India Kanoon*) <https://indiankanoon.org/doc/1127370/> accessed 03 October 2024
[6] *Ibid*
[7] *Ibid*

governor is concerned, it is true that he will have to heed the counsel of his ministers in many cases; nevertheless, in many other cases, the council will not be accessible to him, nor will he be required to heed it. Thus, he said, it is essential to preserve the language in Article 143 pertaining to his discretion.[8]

With all these discussions being, the Chairman of the Drafting Committee was required to clarify the situation. Dr. B.R. Ambedkar said: "Article 143 will have to be read in conjunction with such other Articles which specifically reserve the power to the Governor. It is not a general clause giving the Governor power to disregard the advice of his ministers in any matter in which he finds he ought to disregard."[9]

These two phrases have kept our Commissions and Courts occupied with interpreting the governors' discretion. In the Samsher Singh case, Justices Bhagwati and Krishna Iyer concede that the governor is entitled to provide limited free-wheeling under Article 163(2).[10] According to Justice Punchhi's interpretation, the word 'required' means that the Governor can only use his discretionary powers in the event of a compelling necessity. This necessity can result from either express provision in the Constitution or from rules and orders that are made 'under' the Constitution.[11] If historical instances are any guide, however, it is clear that governors have overreached themselves, expanding their powers at the expense of the actual executive branch by interpreting the use of discretion in a way that benefited the ruling party at the federal level.

Dr. Ambedkar further clarified the reason behind giving governors discretionary powers by stating that *"[…] Because the provincial Governments are required to work in subordination to the Central Government, and therefore, in order to see that they do act in subordination to the Central Government the Governor will reserve certain things in order to give the President the opportunity to see that the rules under which the provincial Governments are supposed to act according to the Constitution or in subordination to the Constitution."*[12]

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[8] *Ibid*
[9] *Ibid*
[10] *Shamsher Singh v State of Punjab* (1974) 2 SCC 831
[11] M M Punchhi, *Report of the Commission on Centre-state Relations* (2010)
[12] Constituent Assembly Debates: Constituent Assembly Debates On 10 September, 1949 Part Iii (n 5)

Article 163

The result of these debates was Article 163(2) of the Constitution, which reads as follows:

> *(2) "If any question arises whether any matter is or is not a matter as respects which theGovernor 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 orought not to have acted in his discretion."*[13]

Article 163(1) provides for the existence of a council of ministers, which in turn is to be headed by a chief minister, the article says that it is this council that will assist the governor in performing his duties as per law.[14] Where the case of discretionary powers is concerned, the governor does not act as per the aid and advice of his ministers. In accordance with Article 163(2), the governor's judgement is final in the event that a dispute arises over whether a particular topic is discretionary or not. Is the governor not now 'an all-pervasive super-constitutional authority' as a result? Is it 'not terribly allergic to our culture, constitutional creed, and political genius'?[15]

Thus, it appears that many of the Government of India Act, 1935's provisions pertaining to the governor's position were taken up and modified by the drafters of the Indian Constitution after independence. The framers of the Constitution originally supported strong federalism, increased provincial autonomy, and the governor's role as the nominal head of state. However, when the Constitution was being drafted and debated, their viewpoint evolved. Debates tended to favour a federal constitution with a unitary structure of government. The governor's constitutional role also changed. Provisions for an elected governor with tenure security and specific duties were included in the Draft Constitution. The term 'appointed' governor replaced the previous one that said 'elected' governor. The governor was granted emergency powers and particular obligations, but he or she was no longer guaranteed tenure.[16]

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[13] Constitution of India 1950, art 163
[14] *Ibid*
[15] *Sardari Lal and Jayantilal Amirtlal Shodhan v F.N Rana* (1964) 5 SCR 294
[16] Tiwari (n 4)

The governor lost the role of the archetypal autonomous official. Despite having a great deal of authority, the governor's position is weak under the Independent India Constitution. Generally speaking, a governor should follow the counsel and advice of the council of ministers, with the exception of the restrictions outlined in the Constitution. However, in some exceptional situations, a governor must make decisions based on his own assessment, even if he has access to the Council of Ministers' counsel.

The way the Constitution has operated since independence suggests that the use of governors' discretionary powers has generated controversy and strain in ties between the central and the state. Governors heedlessly yield to the union government's politically driven demands, undermining the integrity of the constitution. The primary contributing factors have been their weak constitutional position, the appointment of governors with political backgrounds who frequently have clear political leanings, and the union government's propensity to use the governorship for political purposes, particularly when the state is ruled by a different political party.

THE OPERATION OF GOVERNOR'S DISCRETION

The Governor is not merely a Constitutional Figurehead: The role of the president at the federal level is comparable to that of the governors in the states. However, there are two important distinctions. The governors are selected by the president (on the prime minister's recommendation), in contrast to the president, who is chosen by an electoral college made up of the elected members of the state Legislative Assemblies and both Houses of Parliament. Second, they serve as long as the president (who, in turn, is the prime minister's pleasure) remains in office. Despite often having five-year mandates, they are subject to removal, reorganisation, or sacking at any moment. Given their restrictive conception, one would have thought that governors would have little actual authority. Conversely, it has been shown that these two characteristics have generously encouraged the abuse of the governors' authority at the request of the central government party.[17]

[17] M.P. Jain, *Indian Constitutional Law* (5th edn, Wadhwa and Company 2003)

Under presidential rule, the governors assume control of the state's operations with adviser support until fresh elections are held and a new government is chosen. This is a significant distinction since the Constitution does not provide for any circumstances in which the president may rule independently. The ministers act as caretaker government even in the event that the House is prematurely dissolved until such time as further arrangements are formed. Thus, the Court used Article 74 (1) to declare that the notion that the President must continue to lead the government until a new cabinet is established would fundamentally alter the nature of the Executive.[18]

Considering the freedom to act based only on judgement, the president's lone discretion is granted by Article 74, which allows him to ask the Council of Ministers to reevaluate the advice that has been presented to him. The president is required to act in accordance with the Council of Ministers' wishes if the stance is reaffirmed in such a review. As opposed to what was previously stated[19], governors now possess both explicit and implicit discretionary authority.

The Constitution mentions some circumstances that 'expressly or perhaps by necessary implication' allow the Governor to employ certain discretionary powers at his discretion. These circumstances are known as 'judicially recognised' powers.[20]

Article 239, which states that the President administers Union Territories through the Governor, is one of them. Paragraph 9 of the Sixth Schedule, which deals with licences or leases for the purpose of prospecting for or extracting minerals and the share of royalties to the District Councils, is another. Article 371 addresses special responsibilities regarding the establishment of separate development boards in Vidharbha, Marathawada (Maharashtra), Saurashtra, and Kutch (Gujarat); Articles 371 A, C and H (a) (Arunachal Pradesh) are other places you can find these.

We shall ignore these articles because the governor's function is uncontroversial when he exercises his discretion to carry out the duties imposed upon him by the Constitution and

[18] *UNR Rao v Indira Gandhi* (1971) 2 SCC 63
[19] Jain (n 17)
[20] *Ganamani v Governor of Andhra* (1954) SCC Online AP 26

because the courts are not authorised to examine it. The true discretionary powers of the governor are debated, often in relation to the president, because of the contextual discretionary powers or implied powers that must be employed based on potential situations.[21]

The governor is granted discretionary authority under Article 163(1) when the Constitution specifically requires it. In this sense, the most important clause in the Constitution is found in Article 163 (2). The governor's decision in exercising his discretion shall be final and the validity of any action taken by the governor shall not be questioned on the grounds that he ought or ought not to have exercised his discretion. This is especially true if there is any doubt as to whether a particular matter is one regarding which the governor is required by this Constitution to act in his discretion. According to the Administrative Reforms Commission (1969), the governor is required to make decisions under such conditions. This is presumably because he took an oath of office to uphold the Constitution and the laws of the land, acting impartially and with a sense of fair play.[22]

In that regard, there is a substantial difference between the authority vested in the Governor and the President, according to the Supreme Court's decision in *Nabam Rubia v Dy. Speaker*.[23] The wording of Article 163(2) makes it clear that the governor is free to choose topics on which he must use his discretion (beyond the 'judicially recognised situations' mentioned above).

Lack of Unanimity in the Scope of Discretionary Powers: An important point to consider is that there is no unanimous agreement on the extent to which the governor may exercise his discretion. The Punchi Commission Report has identified and demarcated certain areas for the governor to exercise discretion. The Governor may grant, withhold, or refer a bill for presidential assent under Article 200; appoint the Chief Minister under Article 164; dismiss a government that has lost its majority but will not resign because the Chief Minister serves at the Governor's pleasure; dissolve the House under Article 174; submit the Governor's report under

[21] U C Jain and J Nair, *Powers of President and Cabinet* (Pointer Publishers 2000)
[22] Administrative Reform Commission, *Report on Centre–State Relationship* (1969)
[23] *Nabam Rebia v Deputy Speaker, Arunachal Pradesh Legislative Assembly* (2017) 13 SCC 326

Article 356; and assume responsibility for specific regions under Articles 371-A, 371-C, 371-E, and 371-H, among other powers.[24]

On the other hand, the Justice R. S. Sarkaria Commission enumerated five instances, all of them by necessary implication, in which the governor uses his discretion without consulting the Council of Ministers. (These examples differ from those given in Sixth Schedule Articles 371 (1), 371-A, 371-C, 371-F, 371-H, and 20-BB.) We may also add a few more to these that are predicated on court rulings:

- The appointment of a chief minister shortly after an election, in cases where the Council of Ministers has been fired or resigned (Article 164(1)), or in situations where the Council of Ministers' advice is unavailable.
- A Ministry may be dismissed (Article 164(1) & (2)) if it refuses to step down after losing a vote of no-confidence in the Legislative Assembly (which may happen despite the Council of Ministers' recommendation). Demanding that the Council of Ministers review any issue resolved by a minister (Article 167).
- File a report under Article 356 with the president stating that a circumstance has developed that makes it impossible for the state to continue running its government in line with the Constitution (this would go against the Council of Ministers' recommendation).
- Article 200: Reserve a Bill for the President's Consideration.
- Authorising the prosecution of the prime minister or ministers where they are connected to charges of corruption.[25]
- Using his discretion, separate from the Council of Ministers, to resolve legislative assembly disputes in specific circumstances (although the Sarkaria Commission pointed out that various strategies have been used by governments in comparable circumstances, highlighting the necessity for a standard procedure).
- The Legislative Assembly may be called into session in three different circumstances: (a) when the chief minister knowingly neglects to notify the Assembly that it will be called

[24] Punchhi (n 11)
[25] *MP Special Police Establishment v State of MP* (2004) SCC Online SC 1424

into session within six months of its previous meeting or calls a meeting at a date that falls outside of this window; (b) when the chief minister, lacking an absolute majority, neglects to request a vote of confidence within thirty days of assuming office; and (c) when it seems to the governor that, having forfeited the confidence of the Assembly, the chief minister would have to ask for a vote of confidence on the House floor within a reasonable amount of time.[26]

HOW HAVE GOVERNORS EXERCISED THEIR DISCRETIONARY POWERS?

In contrast to the president, the governors have used their discretionary powers more often due to a variety of options for doing so and a lack of agreement regarding the discretion granted to them. We would go over a few of them in short.

Dismissal of Minister: It's unclear whether a governor has the authority to remove a specific member at his discretion. Nonetheless, it was decided that the governor might fire a minister for violating the ministerial oath and that the governor had complete authority over this decision.[27]

Appointment of Chief Minister: Regarding the standards for choosing a prime minister or chief minister, nothing is specified in the Constitution. There are customs that must be followed, but generally speaking, the leader of the party with the majority in the elected House should be that person. Chief ministers have been chosen by non-legislators, such as Kamraj Nadar in 1954 in Tamil Nadu or T. N. Singh in 1970 in Uttar Pradesh, or more recently, Km. Mayawati in 1995 in Uttar Pradesh or Yogi Adityanath in 2017 in the same state, providing that they join the House of Representatives within six months.[28]

In *Mahabir Prasad v Prafulla Chandra Ghosh*[29], it was decided that, in accordance with Article 164 (1), the governor had the sole discretion when choosing the chief minister. Numerous other High Court rulings, such as the Madras High Court's in *S. Dharmalingam v the Governor of Tamil Nadu*[30],

[26] R S Sarkaria, *Sarkaria Commission Report* (1988)
[27] *K.C. Chandy v R. Balakrishna Pillai* (1985) SCC OnLine Ker 198
[28] Constitution of India 1950, art 164(4)
[29] *Mahabir Prasad Sharma v Prafulla Chandra Ghose* (1968) SCC OnLine Cal 3
[30] *S. Dharmalingam v His Excellency Governor of the State of Tamil Nadu* (1988) SCC OnLine Mad 76

echoed this similar point of view. In *Jogendra Nath v State of Assam*[31], the Guwahati High Court held that the governor had complete discretion over who the chief minister would be.

In choosing the chief minister, the Sarkaria Commission (Para 41.10.53) has provided comprehensive instructions on the prudent use of discretion. In retrospect, the governors have used this power in the past, and to be fair, they have done so sparingly. In Madras (1952), Rajasthan (1967), Haryana, Maharashtra, and Arunachal Pradesh (2009), for example, the leader of the single largest party could be appointed as chief minister. Similarly, in Kerala (1982) and Jharkhand (2005), the leader of a pre-electoral alliance could be appointed; in West Bengal (1969), the incumbent chief minister could not face the Assembly; in AP (2009), the chief minister could pass away; or in Jharkhand (2009), the chief minister would be named leader of the post-poll alliance.[32]

Assent to Bill: With two minor modifications, Article 200 (a replication of Section 75 of the Government of India Act, 1935) does not specify a deadline for the governor to either grant assent, declare that he is withholding assent, or declare that he has reserved it for the president's consideration.[33] The phrase 'as soon as possible' appears in Article 200 only in the event that a bill is returned without assent, not in other circumstances. In *Purushothaman v State of Kerala*[34], it was decided that there is no deadline for giving consent. There are no recommendations provided by the Constitution to the governor on what topics he should reserve the Bill for the president's consideration or what matters he should give his assent to or withhold.

In *Hoechst Pharmaceuticals v State of Bihar*[35], the Supreme Court ruled that a governor's authority to hold a measure for the president's approval cannot be contested in court. Article 111 grants the president the same discretionary authority that Article 200 grants the governor. But there is a distinction. The governor will first determine if a state legislature-passed bill violates the Constitution (i.e., whether it plainly violates the Constitution or clashes with a federal statute). Therefore, the governor may choose to either hold the Bill in cold storage without taking any

[31] *Jogendra Nath Hazarika v State of Assam* (1981) SCC OnLine Gau 4
[32] Sarkaria (n 26)
[33] Constitution of India 1950, art 200
[34] *Purushothaman v State of Kerala* (1962) 1 SCJ 477
[35] *Hoechst Pharmaceuticals Ltd. v State of Bihar* (1983) 4 SCC 45

action or, against the Council of Ministers' recommendation, hold it until the president has a chance to review it. In actuality, the state legislature is unable to stop the president from considering a bill that has been unjustly reserved, assent granted arbitrarily, or granted with excessive delay.

Imposition of President's Rule: Moreover, Article 356 permits the dissolution of a state government with a stable majority 'if the President... is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution.'[36] It has been acknowledged by Dr Ambedkar that these Articles may be misused or utilised for political ends. In hindsight, he foolishly believed that 'they would remain a dead letter' and that the invasion must not be an invasion, which is wanton, arbitrary, and unauthorised by law. More than a hundred times, and sometimes in dubious circumstances, the governors have utilised this clause in an apparent attempt to function as the party in the government of the Union.[37]

Dissolution of Legislative Assembly: The governor may sometimes, in accordance with Article 174(2)(b), (a) suspend a session of either the Legislative Assembly or a Legislative Council, and (b) dissolve the Assembly.[38] Regarding the circumstances and timeframe in which the governor may dissolve the House, the Constitution is silent. Sri Mohammed Tahir proposed a change to the original Article 153 to include the grounds for the Assembly's dissolution during the discussion in the Constituent Assembly, but his modification was left out of the final version of Article 174 of the Constitution.

Under Article 174(2)(b), the governor may, in the exercise of his judgement, dissolve the State Assembly under certain situations. In addition, the governor may, at his discretion, use Article 356 to deliver a report to the president. Because he has two jobs to do, he has discretionary authority. Despite being the head of state, he is also tasked with upholding Article 159, which protects the Constitution. It follows that he may decide to disregard the Council of Ministers' recommendations when drafting a report according to Article 356. Additionally, there can be no

[36] Constitution of India 1950, art 356
[37] Tiwari (n 4)
[38] Constitution of India 1950, art 174(2)(b)

justification for the dissolution of nine state legislatures by the Janata Party administration in 1977 and the Congress Party's subsequent action to do the same in 1980. The governor may use his discretion and accept or reject the chief minister's recommendation to dissolve the Legislative Assembly in cases when the governing party has lost the majority in the Assembly or has a questionable majority, as was the case in Punjab in 1967. The word 'may' in Article 174(2) indicates that the governor is not required to follow the Council of Ministers' recommendation in order to dissolve the State Assembly. When the chief minister with the majority recommends dissolving the cabinet just days before the session of the budget (Gujarat in 1971), the governor may reject the advice of the cabinet because doing so would force the ministry to remain in office until the elections are held without passing the budget, which would create a constitutional crisis. Therefore, the governors have an advantage over the president, both under the terms of the Constitution and by the use of discretion.[39]

Personal Satisfaction: Both in *Sanjeevi Naidu v State of Madras*[40] and *Samsher Singh v State of Punjab*[41], the Supreme Court ruled that the satisfaction of the governor or president (under 53 read with Article 74) is not their own, but rather the satisfaction of the Council of Ministers, with the help and advice of which they exercise all of their powers and functions. The 42nd and 44th Amendments' Article 74, which stated that 'the President shall act in accordance with the advice tendered after such reconsiderations,' was amended to put a stop to presidential satisfaction. Regarding the governor, no such change has been made, however.

Dismissal of Ministry: Article 164(2) and Article 75(3) of the Constitution do not include any language indicating that a government should be dissolved upon losing the confidence of the House. Ministers of a state hold office at the governor's pleasure, according to Article 164(1) of the Constitution. In the Constituent Assembly, Dr. Ambedkar made it clear that the President, or Governor in the case of a State, would be free to dismiss the government as soon as it no longer had the confidence of the majority. [42]

[39] Tiwari (n 4)
[40] *Sanjeevi Naidu v State of Madras* (1970) 1 SCC (Cri) 196
[41] *Samsher Singh v State of Punjab* (1974) 2 SCC 831
[42] Constituent Assembly Debates: Constituent Assembly Debates On 10 September, 1949 Part Iii (n 5)

In the Constituent Assembly, Dr. Ambedkar acknowledged that the president or the governor can defy the Council of Ministers' decision if the governing party no longer had the majority of seats in the House. Confusion has increased as a result of the court reviews. In the case of *Jogendra Nath Hazarika v State of Assam*[43], the governor was deemed to have absolute, unrestricted, and unfettered authority over his ability to withdraw at his discretion. *Pratapsingh Raojirao Rane v Governor of Goa*[44] established one restriction on the governor's exclusive authority to dissolve the government. It was decided that the governor's absolute power is limited only when the Council of Ministers has the backing of the majority of members of the House. The Supreme Court noted this as well in *Jagdambika Pal v Union of India*[45]. The ruling in *Shamsher Singh v State of Punjab*[46] established that the president has the authority to remove a government that no longer has the support of the majority but yet refuses to step down. As is the case in the majority of these circumstances, the discretion ought to be used after a House floor test. But as we just said, this isn't always the case.

Removal of Governor: Instead of being impeached, the president dismisses the governors. In a number of rulings, the Supreme Court has mandated that presidents have good reasons for removing governors from office. These reasons include behaviour unbecoming of a Governor, corrupt practises and physical and mental incapacity[47]. But the Court made it clear that these were not acceptable explanations, nor were they excuses for losing faith in the governor or for the governor's policies not aligning with those of the union government. However, the courts have ruled that because the governors are not subject to natural justice laws, the president should not disclose the grounds for the governor's dismissal. Even while there is a compelling first argument for arbitrariness, this is still simply a term without information on the president's motives for firing someone.

Furthermore, it's unclear whether the president has the authority to remove a governor who is charged with serious constitutional violations without consulting the prime minister or even

[43] *Jogendra Nath Hazarika v State of Assam* (1981) SCC OnLine Gau 4
[44] *Pratapsingh Raojirao Rane v Governor of Goa* (1998) SCC OnLine Bom 351
[45] *Jagdambika Pal v Union of India* (1998) 2 SCALE 83
[46] *Samsher Singh v State of Punjab* (1974) 2 SCC 831
[47] *B P Singhal v Union of India* (2010) SCC Online SC 599

against his recommendation. While describing the terms of office for Sri Romesh Bhandari as governor of Uttar Pradesh and Smt. Sheila Kaul as governor of Himachal Pradesh, Noorani (2000, p. 46) makes note of this, even if we have seen the delayed removal of Sri Rajkhowa in Arunachal Pradesh who declined to step down in 2016.[48]

As long as the governors continue to be political appointees of the federal government, their violations of constitutional propriety will likely go unpunished. Their political behaviour has been repeatedly blamed on the central government party as well as their serious mistakes, which include deliberate delays in approving bills and ordinances, nominating people to the Upper Houses, and holding parliamentary positions.

NEED FOR REFORM

Striking a Balance in the Constitutional Mandate: Article 163(2) creates the appearance that, even in non-emergency circumstances, the Governor has broad, ambiguous discretionary powers. This has deceived even the courts[49] that didn't stop Rajkhowa from removing the Speaker and calling a legislative assembly at a makeshift location—even going beyond the liberal interpretations of discretionary powers.[50]

Notwithstanding Dr. Ambedkar's claims that the 'governor's powers are so limited and so nominal that his position becomes ornamental,' H. V Kamath's observations are accurate. He said, 'The Governor is little more than a puppet controlled by the President, who is essentially the Prime Minister, on the one hand, and by the Chief Minister, on the other.'

The concerns centre on the conduct of the governors, who have generally been deemed to be incapable of putting aside their political biases, prejudices, and predispositions while interacting with various state political parties. Because of this, sometimes the choices they make at their discretion seem biased and meant to further the goals of the dominant party in the union government, especially if the governor has previously been involved in politics or plans to do

[48] A.G. Noorani, *Constitutional Questions in India: The President, Parliament and the States* (Oxford University Press 2000)
[49] Punchhi (n 11)
[50] *Nabam Rebia v Deputy Speaker, Arunachal Pradesh Legislative Assembly* (2017) 13 SCC 326

so once his tenure expires. It is believed that this kind of activity weakens the parliamentary democratic system, reduces state autonomy, and strains union-state ties.[51]

It is a well-established notion that the genuine executive, the Council of Ministers, should not lose out to the governor's expanded powers as the official head of state in a parliamentary democracy with responsible governance. Although the extent of the discretionary powers must be rigorously interpreted, there will always be situations and individuals who would interpret it differently in order to forward their political agendas. Governors have violated too numerous and too severe constitutional restrictions to be excused on the grounds of ignorance. In the matter of Dr. Raghukul Tilak[52], the Supreme Court ruled that the governor's position is an independent constitutional office of the head of state, and not subject to the Government of India. He took an oath of office promising to preserve, protect, and defend the law and the Constitution.

As far as we are aware, the Constituent Assembly abruptly renounced the governors' instructions. The governors' and president's whole range of functions was to be governed by the Instrument of Instructions, not only how their discretionary powers were used. Since the adoption of the Constitution, governors have operated partisanly, and they contend that the implementation of such an instrument would have made a difference in reducing arbitrariness.[53]

Dr. B. R. Ambedkar said in the Constituent Assembly on October 11, 1949, that 'there is no discretion in the governor and there is no functionary under the Constitution who can enforce this.' If we were to look for explanations for this, we may have to disagree with him[54]. This was untrue since he had informed the Constituent Assembly on December 30, 1948, of the chief minister's appointment and the legislature's dissolution powers. And the governors have made the worst mistakes in these two areas. The Constituent Assembly discussed whether a central appointee's defiance or disregard of the mandate of an elected government may render the state's autonomy void. Additionally, we would want to differ with T. T. Krishnamachari, who

[51] Administrative Reform Commission (n 22)
[52] *Hargovind Pant v Dr. Raghukul Tilak* AIR 1979 SC 1109
[53] Jain (n 21)
[54] Constituent Assembly Debates: Constituent Assembly Debates On 10 September, 1949 Part Iii (n 5)

favoured 'leaving it entirely to conventions rather than putting it into a body of legislation'. It seems that norms have not progressed.

According to one school of thinking, our Constitution gives no one the right to give the governor instructions or establish any guidelines. According to the Sarkaria Commission Report on Instrument of Instructions, 'We believe that not all of these safeguards can be written into the Constitution, even though we agree that effective safeguards for this purpose should be evolved.' As we've seen, the majority of the protections will be ones that are too complex to boil down to a collection of exact guidelines for operation or use. This is true due to the governor's job and the nature of the office itself.

A different group of academics and others criticise the Drafting Committee for forsaking the Instrument of Instructions.[55] In the same vein, and in an effort to implement the Constitution's provisions in the spirit of balance that the document's authors intended, it has been proposed that there seems to be no obstacle to the issuance of agreed recommendations if they are widely accepted. The Sarkaria Commission Report makes further recommendations for safeguards, most of which are in the form of customs and practices that should be understood in their correct context and faithfully followed by political parties as well as the union and state governments.

Additionally, it has been proposed that the prime minister, chief minister, and vice president form a committee and nominate candidates for the panel from which the president must choose governors. Similar recommendations are made in the Sarkaria Commission Report which would be equivalent to changing Article 155. As we've seen, the centre has generously abetted their misuse after the governors were removed. So, another proposal is to guarantee the governors a five-year term and make them unassailable until they are impeached (similar to how the vice president is impeached). It would be unrealistic to expect any central government to give up authority in response to these proposals, which call for changes to the Constitution.

[55] Noorani (n 48)

Certain Recommendations: The various recommendations discussed above, including those of the Sarkaria Commission, bear one commonality, that being their lack of trust in the present procedure of appointing governors. This is only natural, for the various central governments, irrespective of party line have generously abused the discretionary powers of the governor's office in an attempt to impose central will on the states. Thus, in order to prevent and bring to an end the gross abuse of the governor's discretionary powers, suitable changes need to be made in the appointment procedure, such changes must respect the intent of the Constituent Assembly in creating this post the way it is. The governor is simultaneously, the head of the state administration and the centre's representative, this duality of his office requires to be maintained in any changes. It is for these reasons that any process that requires the president to appoint the governors on the advice of the concerned state governments, such as is the case in Canada and Australia, would be unworkable in India. Instead, the following four recommendations would be more suitable to the Indian Constitutional scheme:

- *Firstly,* the president shall appoint the governors on the advice of a 3-member committee, comprising the prime minister, vice president and chief minister of the concerned state. It must also be ensured that as far as possible, decisions in the committee are made by consensus.
- *Secondly,* similar to the president, governors shall be guaranteed a fixed five-year term, thereby reducing their dependence on the goodwill of the central government to remain in office.
- *Thirdly,* the only method of removing a governor from office shall be by a motion of impeachment passed by the state legislature, the process of impeachment is the same as the one outlined for the president under article 61.
- *Fourthly,* the Inter-State Council shall be empowered to monitor the conduct of the governors and shall provide to the 3-member committee a list of unsatisfactory candidates.

Of course, these recommendations would require constitutional amendments, and it is difficult to imagine any central government that would willingly curtail its own powers. Nevertheless, one can always suggest positive reform without being over cynical regards its implementation.

CONCLUSION

Since India's independence, the function of governors in its federal structure has been a divisive topic. While retaining some discretionary authority, governors were intended to serve as symbolic leaders who would act as a conduit between the federal government and the states. However there have often been disputes and tensions in centre-state relations as a result of the way governors have used their discretionary powers under Article 163.

One major issue is the governors' alleged political behaviour. They are often accused of supporting the central government, particularly in areas where opposition parties hold power. Many have seen their dismissals of state governments, dissolution of legislative assemblies, reserving of measures for the president's approval, and recommendation of President's Rule as politically driven intrusions on state sovereignty.

There is disagreement in the Constituent Assembly regarding how much discretionary authority should be given to governors. This is evident in the discussions held there. The ultimate conclusion was to install governors without the ability for impeachment, despite the backing of several members for an elected governor with safe tenure. Governors with a political bent have taken advantage of the vagueness in Article 163(2) that permits them to make decisions on issues needing their discretion.

Various suggestions have been made in order to stop the abuse of discretionary powers and restore the constitutional balance. These include giving governors directives or policies, guaranteeing governors a stable term, and forming an appointment panel including the prime minister and chief ministers. But putting such suggestions into practice would need amending the constitution, something that no central administration has so far been ready to do.

The fundamental issue is that governor selections are politically motivated, and central governments have historically put party interests ahead of maintaining constitutional validity. Governors' discretionary powers may be abused as long as they are political appointments with no guarantee of tenure.

The governor's office must be shielded from party politics in order to preserve the federal spirit of the Constitution. A variety of strategies, including secure tenure, bipartisan consultation in nominations, and recommendations issued by the Inter-State Council, may be used to achieve this. Governors' discretionary powers can only be used wisely by maintaining their independence and impartiality, which will maintain the delicate balance between federal authority and state sovereignty that the Constitution's authors intended.