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Analyzing the Conflict of Interest between Governors and Governments in Light of Recent Developments

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A question often raised when the governor goes against the elected government in the state is "Is the governor a loyal office of the centre," as once said by former Kerala minister EM Nambudiripad or a formal constitutional head of the state? The primary objective of this article is to find an answer to this question in light of the recent developments in the states of Telangana, Kerala, Tamil Nadu, Maharashtra, and West Bengal, with the relevant articles of the constitution serving as a reference to understand the various facets of governor v/s government conflict. The article also further goes on to highlight that the role of the governor falls short of what the constitution envisaged as the constitution itself falls short in dealing with the certain aspects discussed in this article and accordingly suggests suitable amendments to the constitution keeping in line with the recommendations of different commissions and judgments of the Supreme Court.

Keywords: *governor, government, constitution, conflict of interest, recent developments.*

INTRODUCTION

India, as Prof KC Wheare had put it, is a "semi-federation or quasi-federation Constitutional state" enjoying the features of both a federal and unitary government with individual governments at the state level being regulated by a strong government at the centre, making it

a "union of states" as envisaged under Article 1 of the Indian Constitution ("**the Constitution**").¹ This quasi-federal democratic structure of India today is a result of the constant change it has witnessed since the independence era. The first such major leap was seen in 1967, during the tenure of Prime Minister Indira Gandhi, when the political landscape at the state level started changing with governments being formed by regional or opposition parties. Sensing resistance and insubordination on the part of said state governments, the Central Government resorted to using the office of the Governor as one of the only two solutions for still exercising an overpowering influence over states. The framers of the Constitution bestowed great powers and responsibilities on the Governor, envisaging that the office would be helmed by an individual committed to representing the interests of a state to the central executive. However, in light of the recent developments in various states, which saw a power tussle between the Governors, and states ruled by regional or opposition governments, this duty seems to have been considerably diluted.

In light of recent developments/ controversies in Telangana, Maharashtra, Kerala, Tamil Nadu, and West Bengal, this article aims to understand the different aspects of the conflict between the Governor and the state government in the backdrop of the Constitution. The article also highlights that these conflicts emanate from the vague and ambiguous wording of Constitutional provisions pertaining to the Governor and accordingly suggests suitable amendments to the Constitution along with other solutions to help address the conflict between the Governor and the state government, which continues to plague Indian polity.

CONTEMPORARY ISSUES

Appointment of Governor: Article 153 of the Constitution states that every state shall have a Governor² whom the President shall appoint under Article 155.³ The conditions that have to be met before appointing a Governor are:

- The candidate must be from outside the state where one is about to become a governor.

¹ Constitution of India 1950, art. 1

² Constitution of India 1950, art. 153

³ Constitution of India 1950, art. 155

- **Consultations with the Chief Minister:**

In the case of Telangana, the root of all the conflict between the Raj Bhavan and Pragati Bhavan is the fact that the incumbent Governor, Tamilisai Soundarajan, until a week before she became a Governor, had been the state President of the Tamil Nadu cadre of the Bharathiya Janata Party ("BJP")⁴ ruling at the centre, thereby giving an impression to the opposite state government led by Telangana Rashtra Samiti ("TRS") that the office of the Governor is being used for furthering the political interests of the BJP. On the other hand, in West Bengal, the conflict stemmed from deviance from the standard operating procedure of consulting Chief Minister Mamta Banerjee as it was alleged by the ruling opposition government led by Trinamool Congress ("TMC") that Governor CV Ananda Bose was appointed with no consultation and the Chief Minister was informed of the appointment mere hours before the actual appointment.⁵

- **Aid and Advice:**

Under Article 163(1) of the Constitution, the Governor must act on the "*aid and advice of the council ministers*,"⁶ and the Governor can act outside these bounds only while exercising legitimate discretion under Article 163(2) of the Constitution⁷. Article 163(2) of the Constitution makes it clear that such discretion is final. Under Article 164(1) of the Constitution, the Governor shall appoint the Chief Minister, and on the advice of the Chief Minister, the Governor shall appoint the Council of Ministers.⁸

In the case of Kerala, the incumbent Governor Mohammad Arif Khan, under the "*doctrine of pleasure*" enshrined in Article 163(1) of the Constitution and withdrew his pleasure from the Finance Minister KN Balagopal without the aid and advice of the Chief Minister. The logical

⁴ Koride Mahesh, 'Tamil Nadu BJP chief Tamilisai Soundararajan appointed as Telangana Governor' (*Times of India*, 2 Sept 2019) <https://m.timesofindia.com/city/hyderabad/tn-bjp-chief-tamilisai-appointed-as-t-Governor/amp_Articleshow/70940068.cms> accessed 07 December 2022

⁵ 'Trinamool miffed over the appointment of Governor without consultation' (*The Statesman*, 18 Nov 2022) <<https://www.thestatesman.com/bengal/trinamool-miffed-over-appointment-of-Governor-without-consultation-1503131978.html/amp>> accessed 07 December 2022

⁶ Constitution of India 1950, art. 163(1)

⁷ Constitution of India 1950, art. 163(2)

⁸ Constitution of India 1950, art. 164(1)

sequence of the withdrawal of pleasure is the resignation of the said minister. However, in this case, since the Chief Minister had opposed the move, she expressed confidence in the Finance Minister, and he was retained in the cabinet.⁹

In the state of Maharashtra, the incumbent Governor Bhagat Singh koshyari had not acted on the then Council of Ministers led by the then Chief Minister Uddhav Thackeray's aid and advice to fix a date for the speaker elections and instead used his discretion on the grounds that Rule 6 of the amended Maharashtra State Assembly Rules, which sets rules for the mode of selection of the Speaker through a voice vote, was under litigation in the Apex court. The result was that the chair of the Speaker was left vacant for 17 months.¹⁰

- **Appointment and Removal of Vice Chancellors' row:**

In the states of Tamil Nadu, Kerala, and West Bengal, the conflict between the Governor and government was not confined to the corridors of legislative assemblies but also reached educational institutions where the Governor is designated the ex-officio chancellor. In the case of Kerala, the Governor had asked all those vice-chancellors who came with a single-name recommendation or through a non-academic committee to resign after the Supreme Court turned down the appointment of the Vice Chancellor of Kerala Technical University. The ruling Left Democratic Front ("LDF") government saw this as unwarranted and sought to divest the Governor of the chancellorship.¹¹ In Tamil Nadu and West Bengal, the former saw the government appoint Vice Chancellors without consultation with the Governor whereas the

⁹ 'Kerala Governor, government duel over State Finance Minister's talk' (*The Hindu*, 26 October 2022) <<https://www.thehindu.com/news/national/kerala/kerala-governor-arif-mohammad-khan-withdraws-pleasure-in-finance-minister-k-n-balagopal/article66056454.ece>> accessed 07 December 2022

¹⁰ 'Seems Guv was sleeping for 1.5 yrs: Cong after Maharashtra Speaker election' (*Business Standard*, 3 July 2022) <https://wap.business-standard.com/Article-amp/politics/seems-guv-was-sleeping-for-1-5-yrs-cong-after-maharashtra-speaker-election-122070300399_1.htm> accessed 07 December 2022

¹¹ 'Meet the 9 V-Cs of Kerala universities who were asked to resign by Governor' (*Indian Express*, 25 October 2022) <<https://indianexpress.com/Article/education/meet-the-9-vcs-of-universities-in-kerala-who-were-asked-to-resign-by-Governor-8229411/lite/>> accessed 07 December 2022

latter, witnessed the state government attempt to remove the Governor as chancellor and replace him with the Chief Minister in 24 state universities.¹²

- **Pardon, Remit and Commute:**

Under Article 161, the Governor shall have the power to grant pardons or remission of punishment, to suspend, remit, or commute the sentence of an offence for which the executive power of the state exceeds.¹³ In the Rajiv Gandhi assassination case, the seven convicts who were sentenced to death were recommended to be granted a pardon by Governor Banwari Lal Purohit under Article 161 on the advice of the Council of Ministers. However, instead of acting on the recommendation, the Governor sent it to the President. Finally, the interference of the Supreme Court led to AG Perarivalan being released on the ground of delay in deciding the clemency petition filed in 2015. The release of the remaining convicts followed the release of AG Peraivalan.¹⁴

- **Floor test controversy:**

A *floor test* is a tool used to check whether the present ruling government, be it the single largest party or coalition of parties, inspires confidence in the Legislature. In Maharashtra, the Governor acting under Article 175(2), summoned the Assembly and called for a floor test on the house of the Assembly¹⁵. It was alleged that the Governor had tried to form a BJP government in the state by first calling them to prove the majority despite having lesser numbers. Owing to not being able to meet the required majority, the BJP could not form the government, and the

¹² 'West Bengal passes Bill to replace Governor with CM Mamata Banerjee as Chancellor of state universities' (*Economic Times*, 13 June 2022) <https://m.economictimes.com/news/politics-and-nation/west-bengal-passes-bill-to-replace-Governor-with-cm-mamata-banerjee-as-chancellor-of-state-universities/amp_Articleshow/92187930.cms> accessed 07 December 2022

¹³ Constitution of India 1950, art. 161

¹⁴ Krishnadas Rajagopal, 'Rajiv Gandhi assassination case | Supreme Court orders release of all six convicts' (*The Hindu*, 11 November 2022) <<https://www.thehindu.com/news/national/tamil-nadu/sc-orders-release-of-rajiv-gandhi-assassination-case-convicts/Article66123732.ece/amp/>> accessed 07 December 2022

¹⁵ Constitution of India 1950, art. 175(2)

Shiv Sena, led by the then Chief Minister Uddhav Thackeray, proved the majority and was called to form the government.¹⁶

- **Legislative Powers:**

The most frequent misuse of the office of the Governor is the abuse of legislative powers granted under Article 200 of the Constitution, which lays down the powers of the Governor to grant assent, withhold assent, and reserve the bill for the President to consider or send it back to Legislature for reconsideration. Not exercising any of the powers granted under Article 200 of the Constitution and keeping the bills in limbo, also referred to as pocket veto, constitutes a grave misuse of the powers granted under Article 200 of the Constitution.

The most recent example of such misuse was in Tamil Nadu, where the Legislative Assembly passed the NEET exemption bill, which exempts medical colleges from admitting students of the state through NEET and instead through class 12 marks not to disadvantage the poor and rural students, and reserve 7.5% of the seats for students from government schools. The bill was based on recommendations by the AK Rajan Committee, which was constituted to study the impact of NEET on the students of Tamil Nadu and accordingly came out with a finding that the exam was promoting a “coaching” culture rather than a “learning”, and hence recommended the immediate scrapping of the exam. It was alleged by the ruling Dravida Munnetra Kazhagam (“DMK”) government that Governor RN Ravi was neither giving assent to the bill nor sending it to the President for consideration. Eventually, the bill was sent to the President after much pressure was mounted on the Governor whereby after sending back the bill to the Legislature once for reconsideration, the Governor reserved it for President's consideration when the Assembly sent back the bill without any changes.¹⁷

¹⁶ ‘Maharashtra floor test: Uddhav proves majority; BJP members stage walkout’ (*Economic Times*, 30 November 2019) <https://m.economictimes.com/news/politics-and-nation/maharashtra-floor-test-uddhav-proves-majority-bjp-members-stage-walk-out/amp_Articleshow/72306021.cms> accessed 07 December 2022

¹⁷ ‘Explained: What is Tamil Nadu's anti-NEET bill’ (*First Post*, 5 May 2022) <<https://www.firstpost.com/education/explained-what-is-tamil-nadus-anti-need-bill-medical-exam-10637051.html/amp>> accessed 07 December 2022

- **Executive Overreach or Parallel Administration:**

In Telangana, the order of the Governor to carry out an on-ground covid assessment was termed executive overreach. Similarly, in the National capital territory of Delhi, the Lieutenant Governor carrying out covid impact assessment by meeting officials secretly without consulting Chief Minister Arvind Kejriwal and directing them to ramp up oxygen and increase targeted testing was seen as the Lieutenant Governor running a parallel administration.

- **Consent of the Governor for investigations:**

In West Bengal, the CBI arrested three sitting legislators in connection to the past per the Governor's consent, which according to the Calcutta high court, was not the correct procedure as the CBI should have taken the consent of the Speaker before making the arrests.

RECOMMENDATIONS

The nature of the conflicts witnessed between the governors and governments in the states mentioned above is not anything new in India's democracy, as these kinds of conflicts have already been seen in the past since 1967. The origin of these conflicts can be traced back to the lacunae present in the constitutional provisions dealing with the governor, which are either vaguely worded or not expansive enough. In this direction, the commissions and judgments of the Supreme Court that have sought to strengthen democracy sought to make the position of law on the governor's office clear by trying to fill in the gaps in the constitution through recommendations and formulation of principles, respectively. This article follows the path of the Supreme Court and expert committee recommendations of dealing with the constitution as the source of these conflicts and accordingly proposes the following amendments to be made to the constitution-

1. Nature of a=Appointment and Removal:

- Article 155 of the Constitution has to be amended to include the words "*the President shall appoint the Governor by warrant under his seal or hand after consultation with the Chief*

Minister," as was recommended by the national commission to review the Constitution that was appointed in 2000 by the Central Government; OR

- The other suggestion is to appoint a panel of experts comprising the Prime Minister, Home Minister, Vice President, and Chief Minister of the concerned state, which shall nominate the candidates eligible to become Governor under Article 157 of the Constitution. The President shall finally be consulted before he/ she finally appoints the Governor. The entire process of consultation should happen within one month, and in case of the position is vacant at the time of this nomination and consultation, an existing Governor of another state or the Chief Justice of the given state could be given ad hoc charge of Governor till the new Governor takes over;
- Similarly, Article 156 of the Constitution has to be amended to include the words "*the Governor shall hold office during the pleasure of the President with due consultation of the Chief Minister;"* OR
- The tenure of the Governor needs to be fixed for five years, with the President only appointing the Governor and the removal taking effect only on proven grounds of misconduct by the Legislature of that state;
- Article 157 has to be amended to disqualify current members of any political party and those that have been such members in the recent past, which shall be for ten years.

2. Aid and Advise

Although the 42nd amendment made it mandatory for the President to follow the aid and advice of the Council of Ministers of the Central Government, no such provision was made for the Governor to be bound by the decision of the Council Ministers of the State Governments. In light of the legal vacuum, the Supreme Court had to step in and clear the position of the law on this aspect in the following judgments:

- In the case of *Shamsher Singh v State of Punjab (1974)*¹⁸, the seven-judge bench of the Supreme Court ruled that the Governor shall be bound by the aid and advice of the council of ministers except in cases where he can constitutionally exercise discretion.
- In the case of *Nabam rebia v deputy speaker (2016)*¹⁹, the Supreme Court ruled that Article 163 does not accord the Governor with the general use of discretionary powers against the aid and advice of the council of minister, hence reiterating the Shamsher Singh judgment.

Unfortunately, despite these rulings, Governors have been using their occasional discretionary power in a general sense, so the following amendments have to be made under Article 163 to give effect to the above two judgments.

- Article 163(2) of the Constitution has to be amended to properly define and limit the scope of discretion the Governor can use. In addition, the words "final" and cannot be "called into question" should be deleted.
- Lastly, Article 163(3) of the Constitution has to be amended so that it flows directly from Article 163(2) to make the decisions taken under discretion amenable to judicial review.

3. Doctrine of Pleasure

- Article 310(1) of the Constitution should be amended to replace the phrase "*during the pleasure of the Governor*"²⁰ with "*during the pleasure of Chief Minister*" when it comes to the state level, hence truly giving spirit to the letter "*on the advice of the Chief Minister*" contained in Article 164(1) of the Constitution and passing over the power of pleasure to the Chief Minister, who represents the mandate of the people of the state; OR
- The provision of Governor's pleasure under Article 310(1) of the Constitution should not extend to the Council of Ministers, who should be treated as a separate class from "*civil*

¹⁸ *Shamsher Singh & Anr v State of Punjab (1974) SCR (1) 814*

¹⁹ *Nabam Rebia And Etc. v Deputy Speaker & Ors (2017) 13 SCC 332*

²⁰ Constitution of India 1950, art. 310

servants of the state" and work at the pleasure of the State Legislature, which represents the mandate of the people.

4. Chancellorship

The recommendation of the MM Punchi commission (2007) to do away with the convention of appointing Governors as chancellors of universities has to be implemented uniformly across all the states to not burden Governors with extra-Constitutional duties such as being concerned with the administration of universities and appointment of vice-chancellors exposing the office to controversies and public criticism, and prevent educational institutions from becoming settings of battlegrounds for Governors and governments as was seen in case of Kerala and West Bengal.

5. Floor test/ trust vote

Although the Governor has no role to play in the polity of the State Government, more often than not, the Governors influence polity at the state level by summoning the houses of the Assembly under Article 175(2) of the Constitution. Following are the issues pertaining to this use of the Governor's powers and corresponding judgments-

- Whether the Governor can solely exercise discretion in calling for a floor test?

In the *Nabam Rabia* case, the Supreme Court ruled that the Governor, a nominee of the President, cannot exercise discretion on his own and is bound by the aid and advice of the council of ministers unless the government has lost the Assembly's confidence.

- Whether the Governor can call for a floor test immediately?

In the case of *Shiv Sena v Union of India (2019)*, the Supreme Court ruled that the Governor can call for a floor test immediately after he believes that the government has lost the majority in the house to prevent horse-trading.

- Can the Governor order the CM to hold a floor test, and can the decision be challenged in a court of law?

In the case of *Shiv Raj Chauhan v Speaker of MP (2018)*, the Supreme Court ruled that the Governor can order the incumbent Chief Minister to demonstrate a majority in a floor test, and such a decision is not immune to judicial review. While the above judgments make clear the position of law on floor test, there is still a grey area that has to be addressed-

- Political partisanship

Governors have often shown partisanship by preferring one political party over another to stake claim to form the government, as was alleged in the case of Maharashtra. To prevent this, In the result of a no-clear majority, Article 175(2) has to be amended to mandate that the Governor should call the leader of the largest opposition party to prove the majority, who shall, in turn, become the Chief Minister.

1. Executive and legislative powers

In the Rajiv Gandhi convicts and NEET bill row, the governor could delay making decisions since there was no provision for deciding within a time frame. Hence, the proposed solution is to insert a proviso of one to three months under Article 161 to decide on pardons, remissions, and commutations. Similarly, Article 200 has to be amended to insert a proviso of granting or withholding assent, reserving for the President's consideration, and sending back the bill to the Assembly for reconsideration within a maximum duration of three months.

2. CBI consent

Consent of the state should not be taken to mean the consent of the Governor, as he is not a representative of the people's will. Accordingly, the Calcutta high court held the consent of the Chief Minister or the Speaker of the Assembly in the case of the CBI investigation in West Bengal.

3. Executive overreach

Unless the Governor is fulfilling his Constitutional duties, he has to keep the government in the loop regarding any of the executive actions (which generally do not fall under the purview of

the Governor) he seeks to undertake, like carrying out pandemic impact assessment and any directions like ramping up oxygen production and targeted testing have to be issued only after consultation with the council of ministers.

CONCLUSION

When issues of the kind discussed in this article emerge, one question that is often raised is - "whether the Governor is a loyal officer to the centre" or is a formal executive head of the state as envisaged by the Constitution. The answer is supposed to be a middle path: "the Governor is a bridge between the union and state relations" in this quasi-federal setup. However, do the recent developments discussed in this article suggest the same?

The answer would lie in the negative, as was indicated even by the Supreme Court in one of the judgments that "India is a federation with a strong bias for the centre"²¹ wherein the centre appointed Governor has the upper hand due to Constitutional infirmities in the form of nature of the appointment, lack of timeframes to take decisions in, a show of political partisanship in floor test and no laid down standards for withdrawal of pleasure, etc. it is in this direction that the article has proposed changes to the existing system as battles between Governors and governments do not bode well for India's democracy. Every attempt should be made to make India a "federation with a balance between the centre and state," at least with the office of the Governor.

²¹ *S.R. Bommai v Union of India* (1994) 3 SCC 1