

Constitutional Law and Public Administration in India

Prof. (Dr) Sairam Bhat

Centre for Environmental Law, Education, Research and Advocacy (CEERA)

National Law School of India University, Bengaluru

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State Executive

Speaking of State Executive, India has a parliamentary system of governance at the centre, and a similar structure has been envisaged by the constitution for the states as well. The state executive comprises four actors: the Governor, the Chief Minister, council of ministers and the Advocate General. So, the provisions related to state executive are contained in part VI of the constitution and the relevant articles are articles 153 to 167.

Article 153 says that there shall be a Governor for each state. The Governor is the executive head of the state like the president is, in the case of the union executive. At the Centre, in addition to the President there is also a post of Vice President. When it comes to the state executive, there is no such post such as vice Governor. There is only one post of Governor. The Seventh Constitutional Amendment of 1956 made it possible to appoint the same person as the Governor of two or more states. E.g., the same person can be appointed as the Governor of Karnataka, as well as the Governor of Rajasthan along with being the Governor of Orissa.

What makes the Governor's post special is that he is not elected directly or indirectly. Rather, he is appointed by the president under article 155. So, this might lead to a certain assumption that since he is appointed by the president, he is employed by the central government. That would be a wrong assumption. Just because he is appointed by the president, he is not an employee of the central government and this has been clarified by the court in the case of *Hargovind Pant v. Raghukul Tilak*, which is a 1979 case. So, the post of Governor is an independent constitutional office.

It is not subordinate to the central government. So, in the draft constitution, the makers wanted the Governor to be an elected official. However, there were certain reservations about the same. Why is there a post of Governor? Because we need an impartial head in the state. So, if the Governor is also an elected official, which means that he will have a party affiliation, which automatically makes him not impartial. Secondly, there is already an elected head in the state, which is the Chief Minister. If you have another elected head, that could lead to a lot of clashes. Thirdly, it does not make much sense to spend public

money on the election of an executive nominal head. These were some of the reservations that were there with respect to making the Governor an elected official. So, we discarded the American system wherein, Governors were directly elected by the people and instead, adopted the Canadian system where the Governor of a province is appointed by the Governor general.

As to the qualifications of Governor, there are no educational qualifications mentioned, whether he should have a certain level of education or done this degree. Only two things are mentioned. He should be a citizen of India and he should be above 35 years of age. Certain other conditions mentioned are that he should not be a member of parliament or any state legislative assembly or any state legislative council; and he should not hold any office of profit. What amounts to office of profit is something that the central government and the state governments can decide from time to time. Essentially, the Governor should be not having any other sort of a commitment. His only commitment should be towards the state or the states that he is appointed as a Governor for. And the emoluments, the allowances and the privileges of a Governor is decided by the Parliament. If he is appointed as a Governor for two or more states, then all his expenses will be distributed among these states.

There are certain conventions followed while appointing the Governor. Conventions are general practices which are followed and are not provided under the constitution. The first is that, usually an outsider is appointed as the Governor which means if a Governor is to be appointed in the state of Kerala, usually someone who is not from Kerala will be appointed as the Governor of Kerala. This is to ensure that such person will be free from any influence of local politics. Secondly, the president usually consults the Chief Minister before appointing the Governor.

A person who is appointed as a Governor of a state will not be liable for any decisions taken in his name. And very importantly, he can claim immunity from criminal proceedings. This does not mean that a Governor can commit any kind of a crime and get away with it. It only means that if he is in office, if he is holding the post of a Governor, no criminal proceedings can be initiated against such a person. In such a case, what can be done are: Firstly, he will have to be removed from the office, that is from the post of Governor, then criminal proceedings can be initiated against him. If there is an accusation of murder against a Governor, this is a procedure that must be followed. But there is no such bar with respect to civil proceedings. Hence, even while a person is in office as a Governor, civil proceedings can be initiated against him, but he can claim criminal immunity from criminal proceedings during his term.

The provisions as to the term of a Governor is provided under Article 156. A Governor is appointed for a period of 5 years. However, this is subject to the pleasure of the president. This phrase, the pleasure of the president, is important and means that the president has the

power to remove a person appointed as a Governor at any given time without giving or without providing any reasons for doing so, which becomes a matter of controversy. This is because the president, once he is elected as the president, is bound to act on the aid and advice of the council of ministers under Article 74. So, in effect, it is a central government that is appointing and removing Governors. It is not like the president himself is taking such decisions. It is always on the aid and advice of the council of ministers.

In 1989, when the National Front government led by VP Singh came to power, then President R. Venkataraman sent a message to all the Governors back then asking for their resignations. Later in 1991, when the Narasimha Rao government came into power, they removed several Governors appointed by the VP Singh government. So, the Supreme Court in *BP Singhal v. Union of India*, which was a petition challenging the removal of four Governors from Uttar Pradesh, Gujarat, Haryana, and Goa, observed that the president in effect, the central government has the power to remove a Governor at any time without giving any reason and even without providing this person or granting this person an opportunity to be heard. There is no such condition laid down by the constitution that before removing a person who was appointed as a Governor, an opportunity shall be granted to such person to make a case as to why he should not be removed. If the president says so, the Governor shall be removed. That is the procedure. However, the court has observed that this power cannot be exercised in an arbitrary, capricious, or unreasonable manner. The power of removing Governors should only be exercised in rare and exceptional circumstances for valid and compelling reasons. So, even though the president is not required to provide any reason for his decision of removing a particular Governor, it shall not be unreasonable. It shall only be exercised in rare and exceptional circumstances only when there is a valid and compelling reason to do so. And the court also observed that, just because a Governor is at variance with policies and ideologies of the central government, just because the Governor, might have a different political lineage or he is leaning towards a different kind of a political party or an ideology, a person shall not be removed from the post of Governor.

So, a change in central government is not a sufficient ground for removal of Governors is what the court has observed in this case. Several commissions over the years have also tried to bring a change to this particular provision, to bring more accountability, to bring more stability to the post of Governor. So, the Sarkaria Commission of 1988 recommended that the Governor must not be removed before the completion of their five-year tenure, except in rare and compelling circumstances. The Venkatachaliah Commission of 2002 similarly recommended that ordinarily Governors should be allowed to complete their five-year term. If they must be removed before completion of their term, the central government should do so only after consultation with the Chief Minister of the state in which this Governor is appointed. The Punchhi Commission of 2010 on center-state relations suggested that the phrase 'during the pleasure of the president' should be deleted from the

constitution. Several suggestions have been made over the years. However, none of these were incorporated and the provision remains the same in the constitution.

The Governor under the constitution has different powers, executive powers, legislative powers, financial powers, and judicial powers. But the Governor does not have any kind of military power like the president. The president is the supreme commander of the armed forces. Coming to executive powers, all executive actions in the state are formally taken in the name of the Governor. All administrative actions and executive actions are taken in the name of the Governor. And the Governor has the power to make rules in the way such orders or other instruments which are made and executed in his name will be authenticated. That is one of the powers of the Governor. Governor also has the power to make rules for convenient transactions of businesses in the state. So, in the state, there are several types of activities that must be taken care of.

There are agricultural activities, transport, electricity, there are many portfolios of ministerial activities. So, the Governor can make rules with respect to convenient transactions of such businesses, and he can also make rules for the allocation of such businesses among the ministers in the state. The Governor appoints the Chief Minister and other ministers, and this is provided under Article 163. However, once the Governor appoints the Chief Minister, the rules become sort of reversed and the Governor would not be able to take any decision without the assistance and aid of the Chief Minister. The Governor also appoints the Advocate General of a state and determines his remuneration. The Governor also appoints the state election commissioner and determines the conditions and services and tenure of office of state election commissioner. So, the State Election Commissioner of the State Election Commission looks after the election to the Panchayat and municipal and various other local body elections within a state. The Governor also appoints the chairman and members of the state public service commission. He has the power to appoint. He does not have the power to remove the chairman or the members. That power lies with the president. The Governor can also seek any information relating to the administration of the affairs of the state and proposals for legislation. In the state there might be different kinds of proposals for different types of legislation. So, ultimately once the bill is passed by the legislative assembly or the council, it goes to the Governor for assent just like how a bill goes to the president from the parliament for assent. So, he can seek any information regarding the affairs of the state or such proposals for legislation. He can also require the Chief Minister to submit for consideration to the council of ministers any matter on which a decision has been taken by one of the ministers, but it has not been considered by the council of ministers.

The Governor can also recommend the imposition of constitutional emergency in a state. This is a very important power. So, presidential rule cannot be imposed in a state unless a proposal to that effect saying that the constitutional machinery in the state has failed is made by the Governor to the president. And during the period of such presidential rule, the

Governor enjoys extensive executive power as an agent of the president. The Governor also acts as the chancellor of universities in the state, and he also appoints vice chancellors in such universities. Akin to the President's power under the union executive, wherein the president has the power to summon or prorogue each house of the parliament; the Governor also has the power to summon or prorogue each house of the state legislature.

Summoning is the act of calling upon members of the house for a session, whereas the power of prorogue is the power to bring such a session to an end. So, the Governor has the power to commence his session of the state legislature as well as to bring it to an end. The Governor also has the power to dissolve the state assembly. This is a very important legislative power that the Governor has. Dissolution of the state would be because of multiple reasons. It could be an unconstitutional way of functioning of the state assembly, emergency, war. There could be various reasons. Both these powers, the power to summon, prorogue and dissolve the state assembly is provided under article 174 of the constitution.

The Governor also has the power to address the state legislature at the commencement of the first session after each general election and the first session of each year. So, the first session of the state legislature after the election will be addressed by the Governor. Similarly, the first session of each year will also be addressed by the Governor. The next power of the Governor is regarding sending messages to state legislatures regarding pending bills. So, this power is very similar to that of the president under article 86.

A Governor can send messages to either house of the state legislature with respect to a bill that is pending in the legislature and he also can send messages for other reasons as well. The next power of the Governor is the power to appoint any member of the state legislative assembly to preside over its proceedings when the offices of both the speaker and the deputy speaker fall vacant to perform the duties of the speaker. So, if the offices of both the speaker and the deputy speaker of the state legislative assembly are vacant, then the Governor can appoint any of the members from the state legislative assembly to perform the duties of the speaker. Similarly, he can appoint any member of the state legislative council to preside over its proceedings when both the offices of the chairman and the deputy chairman fall vacant. Continuing with the legislative powers of the Governor, in the union executive the president has the power to nominate 12 members to the Rajya Sabha. These are members of excellence in various fields such as arts, literature, sciences, etc. The Governor of a state also has the power to nominate one-sixth members of the state legislative council. So, if the state legislative council has 60 members, 10 of those members will be nominated by the Governor. The Governor can also nominate one member to the state legislative assembly from the Anglo-Indian community.

A very important power that the Governor has is with respect to the disqualification of members of the state legislature. The Governor decides on the question of disqualification of a member from the state legislature in consultation with the election commission. The

next legislative power is with respect to passing off bills. So once a bill is passed by the state legislature, it will go to the Governor and the Governor has three options. One, he can give assent to the bill. Second, he can withhold his assent to the bill. Third, he can return the bill, but he won't be able to return the bill if it's a money bill. So that's a limitation to the legislative powers of the Governor. If he feels that an amendment shall be introduced in that particular bill, with such comments, he can return the bill. And if there are such comments, then the house or the state legislature is supposed to reconsider that bill accordingly. After this, suppose he sends back the bill, the bill is once again passed by the legislature with or without such amendments. At the second stage, the Governor does not have the option to not give the assent. He'll have to give the assent. But there are some situations in which the Governor can reserve the will for the consideration of the president. And one of such instances where he must do this mandatorily is, if the bill passed by the state legislature endangers the position of the state high court.

And the most important legislative power of the Governor is that he can promulgate ordinances when the state's legislature is not in session. These ordinances must be approved by the state legislature within six weeks from its reassembly and he can also withdraw an ordinance at any time. Moving on to the financial powers of the Governor, he'll ensure that the annual financial statement which is a state budget is laid before the state legislature. Secondly, as per Article 199, money bills can be introduced in the state legislature only with the prior recommendation of the Governor.

No demand for a grant can be made except on his recommendation. Grants are financial aids. So, there are several activities in a state and you would require some sort of financial aid or a grant for these activities. None of those grants can be made except on the recommendation of the Governor. The Governor can also make advances out of the contingency fund of the state to meet any unforeseen expenditure. Contingency funds come into relevance when there is a natural calamity or a disaster. So, the Governor can make advances out of the contingency fund to meet such unforeseen expenditure. The Governor also constitutes a finance commission every five years to review the financial position of the panchayats and the municipalities. These are the financial powers of the Governor.

Just like the President of India, the Governor also has the power to grant pardon, reprieve, respites, or remissions. He can also suspend, remit, or commute the sentence of any person convicted of any offence, but he does not have any power to pardon death sentence. Only the president can do so, and the president can even pardon sentences given by military courts, but the Governor cannot. Another judicial power of the Governor is that he is consulted by the president while appointing the judges of the concerned state high court and the Governor makes appointments, postings, and promotions of the district judge in consultation with the state high court. He also appoints persons to the judicial services of the state other than the district judge in consultation with the state high court and the state public service commissions. A Governor can make a report to the president whenever he

is satisfied that a situation has arisen in the state in which the government of the state cannot be carried on in accordance with the provisions of the constitution and can recommend presidential rule in that state. So, this is the emergency power conferred upon the Governor.

Under Article 163 of the constitution, there shall be a council of ministers headed by the Chief Minister in each state. So, the qualifications to be a Chief Minister are firstly he shall be a citizen of India, secondly, he should be 25 years of age or above and should be a member of either house or state legislature. The powers and functions of the Chief Minister. The Chief Minister is considered as the real executive head of the state and holds absolute power.

This is the same as in the case of the president and the prime minister. The Governor here is considered as a nominal executive head whereas the Chief Minister is considered as a real executive head. He is the working head of the state, and he presides over meetings of the council of ministers and ensures the principle of collective responsibility. So he communicates all decisions of the council of ministers, administrative affairs and proposals of legislation to the Governor when called for. He is a channel of communication between the Governor and his ministers. So essentially, he is the middleman. Whatever decisions the council of ministers have taken, he will inform that to the Governor and whatever the Governor wants to communicate to the council of ministers, he will communicate that to the council of ministers. The Chief Minister is also consulted for appointment of state high court judges and the state public service commission.

The next part of the state executive is the council of ministers. The council of ministers in the state is constituted and functions in the same way as the council of ministers at the center. The Chief Minister is appointed by the Governor whereas the council of ministers are also appointed by the Governor but on the advice of the Chief Minister. So only those persons who are recommended by the Chief Minister can become part of the council of ministers. The qualifications to become a council of minister, firstly is that he shall be a citizen of India, secondly, he shall be of 25 years of age or above. He should be a member of either house of the state legislature. However, non-members can be appointed in the council of ministers provided they must become a member of legislature within 6 months and if they fail to do so then this person will have to forfeit his office.

Council of ministers with the Chief Minister as the head is there to aid and advise the Governor in the exercise of his functions. The council of ministers formulate and shape policies. There are different kinds of policies in the state. There is health policy, there are education policies, and different kinds of policies. So, these policies are formulated and shaped by the council of ministers. They also initiate legislation. Whenever legislation is passed by a state, most of them are initiated by the council of ministers. The council of ministers also coordinates the work of various government agencies. The public administration of a state is guided, directed, and controlled by the council of ministers.

The last part of the state executive is the Advocate General. He is the highest law officer in the state. This post corresponds to the attorney general of India. The Advocate General is appointed by the Governor. He must be a person who is qualified to be the judge of a high court. In other words, he must be a citizen of India and must have held a judicial office for 10 years or have been an advocate of a high court for 10 years. The constitution does not fix any term of office of the Advocate General. It also does not provide any procedure or grounds for the removal of the Advocate General from his office. It only says that he holds office during the pleasure of the Governor.