

DOCTRINE OF PLEASURE WHETHER AN IMPEDIMENT TO GOVERNOR'S FUNCTIONING

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INTRODUCTION

Governor is the Chief Executive official of the state. The Executive power of the state is vested in him and all executive actions are taken in his name in accordance with the Constitution¹. Governors of Indian states have been vested with powers and functions at the state level which are very similar to the powers and functions assigned to the President in the centre. The powers and functions so conferred include the exercise of certain discretionary powers. In such cases the Governor has to act on his own judgment. It is the duty of the Governor as the representative of the centre to ensure that the state is being carried on in accordance with the provisions of the Constitution. The most important function of a governor is to preserve, protect and defend the constitution.² For example when it comes to the notice of the state governor that the state can no longer be carried out in accordance with the Constitution, by the present government, he may report the same to the President. The President on being satisfied with such report or otherwise may take over the administration of the state by declaring President's rule³. This power of the centre to take over the state rule in a federal country like India is criticised very widely. Also there is a probability of centre using the governor to meet their own political motives and there are multiple instances where it was alleged that the office of Governor has been misused by the Centre by its unwarranted application.

Chapter 2 of part VI of the constitution of India provides for provisions in regard to the executive power of the state. Article 153 simply provides for the requirement of a governor in all states. Article 155 and 156 provides for the appointment a Governor in a state and term of office of a governor, respectively. Thus by the provisions of the constitution a Governor of a state is appointed by the President. Even though he is appointed for a term of five years, he or

¹ Article 154 of the constitution of India

² Article 159 of the constitution of India

³ Article 356 of the constitution of India

she holds office “during the pleasure of the President”. As President is bound to act on the aid and advice of the Council of Ministers under Article 74 of the Constitution, in effect it is the central government that appoints and removes the Governors. “Pleasure of the President” merely refers to the will and wish of the central government. The power to withdraw the pleasure is an unfettered power, which does not come with any restrictions. Therefore there is all the chance of it being misused

OBJECTIVE

The governor of a state functions in two distinct manners. On the one hand a governor is the head of the state, making him a sovereign authority and on the other hand he is appointed and removed following the pleasure of the president, making him subordinate to the president. The pleasure of president is the will of the council of ministers, as the president is bound to act on the aid and advice given by the council of ministers. There is every chance that this unfettered power be used arbitrarily and capriciously to meet the political end of the centre in the states. Therefore in the present circumstance it is very necessary to understand the legal position of a Governor in a state. Also to analyse the extent of doctrine of pleasure the president can exercise in the removal of the governors in the country and how it impedes the Governor in carrying out his functions and duties.

This article tries to analyse the position of Governor as the Constitutional head of the state in the backdrop of federalism and also analyses the legal position of Governor taking the example of article 356 to analyse the misuse of power by the centre through the office of Governor. This is followed by analysing the provisions regarding the appointment and removal of governor. The article concludes by describing how the removal of governor can impede the independence of the office and therefore can lead to misuse of power by the council of ministers.

DOCTRINE OF PLEASURE AN IMPEDIMENT TO GOVERNORS POSITION

The Governor is the chief executive or the executive head of a State in India. He is appointed by the president by warrant under his hand and seal⁴. The executive power in a state shall be exercised by the governor and the officers subordinate to him⁵. The powers and functions of the Governor of a State closely resemble the powers and functions of President at the centre. The governor, like the president is a constitutional body. He is not a real functionary but acts on the advice of the Council of Ministers of the state. Under the Constitution of India, the Governor of a State possesses wide range of powers and functions. They can broadly be classified as executive, legislative, financial and judicial powers.

“Out of these powers and functions some of them are discretionary powers where the governor has to exercise his own reasoning and judgment to take decisions. The discretionary powers of Governor in a state are broader in comparison to the powers of a president at the centre. One such illustration possible is the exception to Article 163 of the constitution. The Article 164 provides that there shall be Council of Ministers in each state with the Chief Minister as the head to aid and advise the Governor in exercise his functions and the Governor should act on such aid and advice. But where the governor has to exercise his or her discretion, it becomes an exception to the general rule as provided under Article 164. Also the constitution provides for judicial immunity and the question of whether a matter falls within the Governor’s discretion or not shall be outside the purview of judicial review. The decision of the Governor shall be conclusive and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion. Moreover, the question of what advice was tendered by the Governor to the Ministry cannot be inquired into any court.

The issue whether the governor is merely an observer of the centre shall be understood in the context of Article 356 of the constitution. Article 356 provides for provisions in case of failure of constitutional machinery in the states. Here the governor of a state has the power to exercise his discretionary power and can recommend the president about the failure of the constitutional

⁴ Article 155 of the Constitution of India

⁵ Article 154 of the Constitution of India

machinery in the state and a situation has arisen in which the Government of the state cannot be carried on in accordance with the provisions of this Constitution. The president on receipt of such report from the governor, if satisfied may proclaim emergency and assume to himself all or any of the functions of the state. The governor keeps a watch on the functioning of the administrative machinery and every organ of the State and in such emergencies act as a formal channel of communication between the Union and the State. Thus while making the independent report also acting in larger public interest, the governor acts as an observer of the Union.

When such immense discretionary power is given to the governor, there is every chance that it may be misused. Also there are numerous allegations levelled against the central government that the Union utilizes the Governor for its own political ends. Lately, it has also been observed that many Governors came to regard themselves as the agents of ruling party rather than the guardians of federal democracy. In this instance it is very important to analyse whether the office of governor is subservient to the central government and does the removal of governor by reason of withdrawal of president's pleasure impeding the governor's position.

In the 21st century with numerous parties and different parties with very distinct ideologies the Governors are compelled to act more as an agent of the Centre, particularly when the party in power at Centre and state are of opposite ideologies. They are forced to dance accordingly to the Centre's tune. They overlook their role as an impartial referee and misuse their powers to please their masters in the centre. This is due to the wrong belief that the Governors can be hired and fired at the mere will of the centre. They act on the wish and will of the leaders at the centre by misusing their powers of appointment and dismissal of Chief Ministers, summoning, proroguing and dissolving the Assemblies, recommending President's rule and giving or withholding assent to Bills, etc. therefore the governor's office are misunderstood to be one subservient or subordinate to the Centre.

The real position of a Governor as envisaged by the founding fathers of our constitution is best explained a Constitution Bench in *Hargovind Pant v Dr. Raghukul Tilak*. In the judgment it was held that, "the Governor is not under the control of the Government of India. His office is not subordinate or subservient to the Government of India. He is not amenable to the directions of the Government of India nor is he accountable to them for the manner in which he carried out his functions and duties. He is an independent Constitutional office which is not subject to

the control of the Government of India.” Therefore the governor, according to the makers of the constitution makers is an independent body.

In *Rameshwar Prasad (VI) vs. Union of India*⁶ the Court reiterated the status of Governor as explained in *Hargovind Pant*, and also noted the remark of Sri G.S. Pathak, a former Vice-President that "in the sphere which is bound by the advice of the Council of Ministers, for obvious reasons, the Governor must be independent of the centre" as there may be cases "where the advice of the centre may clash with advice of the State Council of Ministers" and that "in such cases the Governor must ignore the centre's 'advice' and act on the advice of his Council of Ministers."

Dr. B. R. Ambedkar stated "If the Constitution remains in principle the same as we intend that it should be that the Governor should be a purely constitutional Governor, with no power of interference in the administration of the province....."⁷ The constitution of India with a federal framework confers some very special and extra ordinary powers to the governors of states for advancement of federal principles. Such conferring of powers is very much justified because the state has to be governed under the Governor. A Governor should exercise such powers absolutely on basis of his own judgement and take decision with great caution. His decision must not be influenced by any sense of insecurity. The true constitutional position of the Governor is that he is the head of the State and should balance the directions from both centre and state. When there is a clash he should act on account of his oath, to preserve, protect and defend the constitution.

Constitution of India provides that each State shall have a Governor. An amendment of 1956 makes it possible to appoint the same person as the Governor of two or more States.⁸ The Governor is appointed by the President and holds office during the pleasure of the President even though he is appointed for a fixed term of five years.⁹ As the Governor holds office during the pleasure of the President means he can be removed and transferred by the President. The Pleasure Doctrine has its origin in English law, with regard to the tenure of public servants appointed under and by the Crown. In *Dunn v. Queen*¹⁰ the Court of Appeal referred to the old

⁶ 2006 (2) SCC 1

⁷ Constituent Assembly Debates (Volume III Pages 455 and 469).

⁸ Article 153 of the Constitution of India

⁹ Article 156 of the Constitution of India

¹⁰ 1896(1)QB 116

common law rule and held that “a public servant under the British Crown had no tenure but held his position at the absolute discretion of the Crown.

This rule was later brought into India in the case of *Union of India v Tulsiram Patel*¹¹ held that “In England, except where otherwise provided by statute, all public officers and servants of the Crown hold their appointments at the pleasure of the Crown or *durante bene placito* (“during good pleasure” or “during the pleasure of the appointor”) as opposed to an office held *dum bene se gesserit* (“during good conduct”), also called *quadiu se bene gesserit* (“as long as he shall behave himself well”). When a person holds office during the pleasure of the Crown, his appointment can be terminated at any time without assigning cause. The exercise of pleasure by the Crown can only be restricted by legislation”.

The court in numerous judicial pronouncements after independence has clarified the doctrine of pleasure. In the landmark judgment of a constitutional bench in *B P Singhal v Union of India*¹², there was a clear distinction drawn between the doctrine of pleasure as it existed in a feudal set-up and the doctrine of pleasure in a democracy governed by rule of law. It was held that “in a nineteenth century feudal set-up unfettered power and discretion of the Crown was not an alien concept. However, in a democracy governed by Rule of Law, where arbitrariness in any form is eschewed, no Government or Authority has the right to do what it pleases. The doctrine of pleasure does not mean a license to act arbitrarily, capriciously or whimsically. It is presumed that discretionary powers conferred in absolute and unfettered terms on any public authority will necessarily and obviously be exercised reasonably and for public good.¹³

The power of judiciary to review the decision of the president to remove a governor is limited, as the reasons which can be assigned to such removal are also limited. It was also concluded by the bench that “As there is no need to assign reasons, any removal as a consequence of withdrawal of the pleasure will be assumed to be valid and will be open to only a limited judicial review. If the aggrieved person is able to demonstrate *prima facie* that his removal was either arbitrary, malafide, capricious or whimsical, the court will call upon the Union Government to disclose to the court, the material upon which the President had taken the

¹¹ (1985) 3 SCC 398

¹² (2010) 6 SCC 331

¹³ *B P Singhal v Union of India* (2010) 6 SCC 331

decision to withdraw the pleasure. If the Union Government does not disclose any reason, or if the reasons disclosed are found to be irrelevant, arbitrary, whimsical, or malafide, the court will interfere. However, the court will not interfere merely on the ground that a different view is possible or that the material or reasons are insufficient.”¹⁴

The Punchhi Commission Report in 2010 suggested that the phrase “during the pleasure of the President” should be deleted from the Constitution, because a Governor should not be removed at the will of the central government; instead he or she should be removed only by a resolution of the state legislature.

Hence it is a well settled law that though a Governor has a fixed tenure according to the constitution, he can be removed at any time, as he holds office during the pleasure of the president. This means that the ultimate authority which decides the tenure of a governor is the Prime Minister and Council of ministers. Article 74 of the Constitution of India simply mandates that the president of India shall exercise his functions and the powers conferred on him in accordance with the aid and advice given by the Council of Ministers with the Prime Minister at the head. Thus the Union government or the party in power has an effective control over the appointment and removal of Governor in any state. These is a treat on the tenure of every Governors, he can be removed by the President, at his discretion. One such example is in the year 1977 just after the Emergency when Janata Government came to power she removed all the Governors because they were the appointed by the Indira Gandhi government. When Indira Gandhi returned to power in 1980 she acted in the same manner banishing the Governors appointed by the Janata Government.

The Sarkaria Commission recommendations in 1988 provided guidelines regarding the removal of Governor. Some of the major recommendations are Governors should not be removed before their five year tenure, except in rare and compelling circumstances. This mandate would provide them with security of tenure and they can carry out their functions and duties without fear, bias or favour. If such rare and compelling circumstances did exist, the Commission said that the procedure of removal must allow the Governors an opportunity to explain their conduct, and the central government must give fair consideration to such

¹⁴ B P Singhal v Union of India (2010) 6 SCC 331

explanation. It was further recommended that Governors should be informed the grounds of their removal.

CONCLUSION

The governor of a state is appointed under Article 153 of the constitution by the president under an oath to preserve, protect and safeguard the constitution. He has to submit the report as mandated by Article 356 in case of breakdown of constitutional machinery in the state. In such instances the governor has to act as an observer of the union and become an official channel of communication. The office thus is given special and extra ordinary discretionary powers along with numerous other powers and is susceptible to misuse. The appointment and removal process and unfettered pleasure doctrine which can be used by the president in such appointment and removal has made the governor wrongly believe that he is subservient to the union. During the past few years after independence, very often the discretionary powers of the governor is used by him to satisfy the political ambitions and motives of the party in the centre, due to the wrong belief and lack of security of tenure. As the president is supposed to act on the advice of the Council of Ministers, the issue has far reaching consequence. Even though different law commission reports have been brought in and has recommended for a change in the situation. None of them has been enforced by the legislature and they still remain as recommendations. This is merely due to the fear of the Council of Ministers at the centre that they will lose their power which they have been exercising through the president of India. It is high time that the governors' position be given an independent status like the president in order to enforce the federal principles in the country. The removal of the Governor should also be done by an impeachment process in the respective Legislative Assembly.

BIBLIOGRAPHY

- 1) V. N. Shukla's Constitution of India, 11th edition, Mahendra P. Singh
- 2) GOYAL, RAJNI. "THE GOVERNOR: CONSTITUTIONAL POSITION AND POLITICAL REALITY." *The Indian Journal of Political Science*, vol. 53, no. 4, 1992, pp. 505–523. JSTOR, JSTOR, www.jstor.org/stable/41855632.
- 3) Misra, K. P. "PRESIDENT'S POWER IN INDIA: ITS NATURE AND EXTENT." *The Indian Journal of Political Science*, vol. 23, no. 1/4, 1962, pp. 168–178. JSTOR, JSTOR, www.jstor.org/stable/41853923.
- 4) Governor as a Factor of Indian Federalism (<http://shodhganga.inflibnet.ac.in>)
- 5) Governor as Connecting Link Between the Center and the States (<http://shodhganga.inflibnet.ac.in>)