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A COMPARATIVE STUDY ON THE CONSTITUTIONAL PROVISIONS RELATED TO THE PRESIDENT AND THE GOVERNOR

ABSTRACT

The provisions in the Constitution of India for the Governor are provided from Article 152 to Article 237. The provisions from Article 52 to 62 of the Constitution are the provisions provided for the President. The Governors and the Lieutenant Governors who are also known as Administrators of the states as well as of Union Territories of India generally possess utmost powers and functions at the State level which is similar to that of the President of India at the Central level. The President of India is known to be the head of the Republic of India and is also the formal head of the executive, legislature and judiciary of India and is also the commander-in-chief of the Indian Armed Forces.¹ On the other hand, the Governors control and regulate the States while the Lieutenant governors control and regulate Union Territories per se and the National Capital Territory of Delhi. Governor acts like a nominal head, however, the real power lies with the Chief Minister of a particular State for that matter and the Council of Ministers.² This paper aims to analyze the evolution of the provisions, powers and the functions of the Governor and the President respectively. Through this paper, an in-depth comparative analysis of the respective positions of the Governor and the President has been done with respect to their duties and responsibilities and the relevance towards the nation. It becomes important to note that the aspect of the comprehensiveness of the two positions is relevant in today's scenario as well.

INTRODUCTION

The independence of India dates back to 15 August 1947. In the initial time, as a dominion within the Commonwealth of Nations with George VI as king, India was represented by a governor-general.³ Yet, the Constituent Assembly of India, under the framework of B.R.Ambedkar decided to undertake the process of drafting an entirely new constitution for

¹ Chapter 17, Laxmikanth M, *Indian Polity*, Tata McGraw-Hill Education India, ISBN: 9781259064128, 9781259064128

² Ibid.

³ Sharma, Brij Kishore, *Introduction to the Constitution of India*, (2007) PHI Learning, ISBN: 978-81-203-3246-1.

the country. The Constitution of India was finally enacted on 26 November 1949 and was enforced on 26 January 1950, thereby; making India a republic and the office of monarch and governor-general were then replaced by the whole new office of President of India, with Rajendra Prasad being the first President of Independent India.⁴ While the President is elected by the representatives of the people, namely, the Members of Parliament and the Members of the State Legislatures, the Governor is merely appointed by the President which actually that he is appointed by the Union Council of Ministers. It is the proven fact that the Governor does not actually has the security of the tenure as he can removed by the President at any time.⁵ The Governors are being pejoratively called the ‘Agents of the Centre’ and it is true that the Central Government is not expected to give any such instructions which are deemed to compromise the very status and position of the Governor nor is it expected to remove him just for not implementing the any instruction that it gives and the experience for the last several years belies this hope.⁶

As it is famously said that “as the President acts on the advice of his Ministry”, it may be contended that if the Governor takes action in contradiction to the policy of the Union Ministry, he could risk being removed from his post and therefore he has to follow the advice of the Union Ministry and this very removal of the Governor under such circumstances would otherwise mean that the Union executive would effectively control the State executive, which is in complete opposition to the basic structure of our federal Constitution.⁷ **Article 356(1)** was designed to secure that if the Governor was pursuing policies which were detrimental to the State or to the Union itself, the President has the power to remove the Governor from his office and appoint another Governor, hence, power of the impeachment clearly is a power to be exercised in rare and exceptional circumstances”.⁸

QUALIFICATIONS AND APPOINTMENTS DISTINGUISHED

In order to embark upon the differences, it is essential to analyze at first that there are clearly distinctive appointments and the qualifications of both the President and Governor for that matter. The enumeration has been explicitly provided with that regard.

THE GOVERNOR

The **Article 153** of the Indian Constitution provides that there shall be a Governor for each State; however, nothing shall prevent the appointment of the same person as Governor for two or more

⁴ Jai, Janak Raj (2003), *Presidents of India, 1950–2003*, Regency Publications, ISBN: 978-81-87498-65-0

⁵ Goyal, Rajni, *The Indian Journal of Political Science* Vol. 53, No. 4, (1992), Published by: Indian Political Science Association, <https://www.jstor.org/stable/41855632>

<http://legallaffairs.gov.in/sites/default/files/The%20Institution%20of%20Governor%20under%20the%20Constitution.pdf>

⁶ https://shodhganga.inflibnet.ac.in/bitstream/10603/132593/12/12_chapter%204.pdf

⁷ *Kesavananda Bharati v. State Of Kerala And Anr*, (1973) 4 SCC 225: AIR 1973 SC 1461

⁸ H.M. Seervai, *Constitutional Law of India*, Forth Ed. Vol. III, N.M. Tripathi, Bombay, 1996, p. 3103

States according to this very provision. **Article 155** of the Constitution provides that the Governor of the State shall be appointed by the President by the warrant under his hand and seal which actually means that the President has the right and power to appoint the governor of the State with the consultation and advice of the Council of Ministers. **Article 157** of the Constitution provides for the qualifications of the person in order to become eligible to be appointed as the Governor of a particular State which is that no person shall be eligible for appointment as Governor unless he is a citizen of India and has completed the age of thirty-five years. In *Ramesh Chandra v. State of Rajasthan*,⁹ it was held by court that Article 155 of the Constitution, in my view, only provides for the appointments to a Constitutional office and it cannot be held that the Governor of a particular State holds an employment under the Government of India merely because he holds an office or is appointed thereto. It becomes extremely difficult to conceive that there is a master and servant or an employer and an employee relationship when it comes to the Government of a State and the Government of India.

THE PRESIDENT

Article 58 of the Constitution of India provides for the qualification of election of the President of India. According to the **clause (1)** a person is only eligible for the election of the President until and unless he is a citizen of India, he has completed the age of thirty-five years and hence is completely qualified for the election as a member of the House of People. According to the **clause (2)** a person is not eligible for the election of President if he holds any office of profit under the Government of India or the Government of any of the State or under any local or other authority which is subject to the control of any of these Governments.¹⁰ According to this very Article, a person shall not be deemed to hold any office of profit because of the reason that only he is the President or Vice-President of the Union or the Governor of any State nor is a Minister either for the Union or for any State. In the leading case of *Peter Samuel Wallace vs. Union Of India And Ors*,¹¹ it was held that if the requisite requirements are not being fulfilled by the petitioner, the appointment becomes unconstitutional and if he still claims that he is a duly nominated candidate, the Returning Officer is entitled to undertake the view that his nomination did not fulfill the requirements of the law.

Article 54 of the Constitution of India, the President should be elected by the members of the Electoral College which comprises of the elected members from both the Houses of the Parliament and by the elected members of the Legislative assemblies of the State. The explanation of the term "State" includes the National Capital Territory of Delhi and the Union territory of Pondicherry for that matter.

Article 55 of the Constitution of India, defines the manner of election of the President election itself. According to **clause (1)** there needs to be uniformity in the scale of representation of the

⁹ 1977 WLN 414

¹⁰ Dubey, Anil, *Presidential takeover of the State Government*, Indian Law Institute, Summer Issue- 2018

¹¹ AIR 1975 Delhi 112, 11 (1975) DLT 155

different States at the election of the President. The **clause (2)** of the Article provides that in order to secure this particular type of uniformity, the votes casted needs to determined by the sub-clauses as mentioned. **Sub-clauses (a), (b) and (c)** provides for the requirements of that needs to be fulfilled with regards to the voting of the members. The **clause (3)** of the Article provides that the election of the President should be held in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election has to be done by secret ballot.

Article 71(1) provides that all doubts and disputes arising out of or within the nexus of the election of a President or vice President shall be inquired into and decided by the Supreme Court whose decision deemed to be held final. In the case of *Narayan Bhaskar Khare v. The Election Commission of India*,¹² and in *N. P.Ponnuswami v. Returning Officer, Namakkal Constituency*,¹³ it was held by the Supreme Court that the doubts and disputes which are in the connection with a particular election cannot be raised by the way of a writ petition before the election. It was even held by the hon'ble Supreme Court that it is only after the election is held these doubts and disputes can be resolved. The locus standi for raising such doubts and disputes is possessed only by a candidate who alone is entitled to file an election petition. He could have become a candidate for that matter. It is his own willful default which is solely responsible for not becoming one. It was held that according to their view, he has no locus standi to question the very validity of the Presidential election scheduled to be held on the aforementioned date irrespective of the grounds which he may wish to urge to invalidate the said election.

CONDITIONS, TENURE AND IMPEACHMENT- THE DISTINCTION

It is pertinent to note that since the office of Governor and the President is the most prestigious one, there are certain conditions pertaining to holding the same as well as the tenure and the process of impeachment or removal (as in case of Governor) has a clear distinction.

The **Article 156** provides for the tenure of the governor of the States in which he has been prescribed that he shall hold the office during the pleasure of the President. The **clause (2)** of the Article provides that the Governor shall provide the resignation in writing to the President. The **clause (3)** of the Article provides that the governor holds the office for the term of complete five years from the date on which he enters upon his office, provided, that a governor holds office in continuation until his successor enters upon his term.

There are certain conditions as well according to which the Governor holds the office which are being described in the **Article 158**. The **clause (1)** of the Article states that the Governor should neither be a member of House of parliament nor of a House of Legislature of any of the State

¹² (1957) S.C.R. 1081, (1)

¹³ (1951) S.C.R. 218, (2)

which have been specified in the first schedule. Also it has been provided that if any person who has been the member of House of People is of the State Legislature has been appointed as the Governor, he will be deemed to have vacated the seat that he held earlier in the House on the date on which he enters upon his office. The **clause (2)** prohibits the Governor to hold any office of profit. According to the **clause (3)** of the Article, the Governor is entitled to use the official residences without the payment of rent for the same and is entitled to such emoluments, allowances and privileges which has been determined by law or by Parliament until contrary has been made. The **clause (4)** states that the emoluments and allowances of the Governor will not be diminished during his term of office.

Article 56 of the Indian Constitution provides for the term of the President of India. According to the **clause (1)** of the Article, the president is entitled hold the office for five years from the very date on which he has entered upon his office, provided that the President resigns the office by providing the same in writing to the Vice President, or has been removed from the office through the process of impeachment. According to the **clause (2)** of the Article, any resignation which has been provided to the Vice President should be communicated to the Speaker of the House of the People.

Article 61 of the Constitution provides the provision of procedure of impeachment of the President. The **clause (1)** of the Article provides that when a President is to be impeached for violation of the Constitution, these charge shall be preferred by either House of Parliament. The **clause (2)** of the Article provides that no such charge shall be preferred unless the requirements in the sub clauses are fulfilled. The **clause (3)** of the Article provides that when a charge has been so preferred by either House of Parliament, the other House shall investigate the charge or cause the charge to be investigated and the President shall have the right to appear and to be represented at such investigation. The **clause (4)** of the Article provides that if as a result of the investigation a resolution is passed by a majority of not less than two-thirds of the total membership of the House by which the charge was investigated or caused to be investigated, declaring that the charge preferred against the President has been sustained, such resolution will be having the effect of removing the President from his office as from the date on which the resolution is so passed.

ANALYSIS PERTAINING TO POWERS, FUNCTIONS AND PRIVILEGES

The Governor is vested with numerous powers and is responsible to perform certain functions. The Governor is being provided with certain privileges as well.

EXECUTIVE POWERS

Article 154 states that the Governor is vested with the executive power of the State which are being exercised by him either directly or through the subordinate officers in accordance with this Constitution.¹⁴ The **clause (2)** of the Article states that nothing in this article shall be deemed to transfer to the Governor any functions conferred by any existing law on any other authority; or shall prevent Parliament or the Legislature of the State from conferring by law functions on any authority subordinate to the Governor.¹⁵

Article 162 states that there is certain extent to which the exercise of the executive power by the Governor. Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws; provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof.¹⁶

In *State of Orissa and another v. Pradipta Kumar Behera*,¹⁷ it was held that the scope of Articles 162 and 309 of the Constitution of India is that any rule enshrined under Article 309 of the Constitution of India cannot be supplemented by executive instruction framed under Article 162 of the Constitution of India.

LINCHPIN IN CENTRE AND STATE RELATIONS

The term **linchpin** refers to the connection between the two parties. Jawaharlal Nehru, in his famous speech, once referred to the Governor as being the “linchpin of constitutional apparatus of State”. On the one hand, he is the Constitutional Head of the State and is a part of the State apparatus. On the other hand, he is the representative of the Central Government in the State and thus provides a link with Centre.¹⁸ In the exercise of his legislative powers, the governor has the power to reserve some of the bills for the president and also when the State legislature is not in session and the governor considers it necessary to have a law, then the governor can promulgate ordinances.

These ordinances are required to be submitted to the state legislature in its next session. According to the Report of the Administrative Reforms Commission, "the Governor functions, for most purposes, as a part of the State apparatus; but he is meant, at the same time, to be a

¹⁴ Singh, M.P, *Constitution of India*, Lucknow: Eastern Book Co, 1990

¹⁵ Ibid.

¹⁶ Article 162, the Constitution of India, 1950

¹⁷ W.P.(C) No.7473 of 2017 & W.P.(C) No.21249 of 2016

¹⁸ M.P. Jain, *Indian Constitutional Law* (1987) p. 187

linked with the Centre and this link and his responsibility to the Centre flows out of the Constitution mainly because of the provision that he is appointed and can be dismissed by the President, hence, The Constitution specifically provides for a departure from the strict federal principles and it is relevant to observe that this departure is not fortuitous or casual".¹⁹

However, the office of the Governor is often misused than being used for productive purposes. In *State of Rajasthan v. Union of India*,²⁰ Justice Bhagwati has also conceded that the inclusion of the word 'otherwise' in Article 356 gave the President very drastic Powers which, if misused or abused can destroy the Constitutional equilibrium between the Union and the States.

DISCRETIONARY POWERS

According to **Article 161** of the Indian Constitution, the Governor of a State has enormous power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends. Hence the Governor can order life imprisonment but cannot order death sentence. In *Baldev Singh Versus State of Punjab*,²¹ it was held by the court that where a convict under the NDPS Act was seeking benefit of the Circular issued by the State Government under Article 161 of the Constitution on the occasion of Independence Day, whereby, all prisoners who had been convicted in the State of Punjab and confined to jails as on August 15, 2003 were given one year special remission. The Court relying upon the decision of Ekka Ram's case held that the embargo under Section 32-A of the NDPS Act was applicable only to executive decisions under Section 432 of the Code of Criminal Procedure, but did not apply for the purpose of imposing any restriction on the powers of the Governor under Article 161 of the Constitution of India and has held that the convicts are also entitled to the benefit of aforesaid Circular. In *Kuldip Singh v. State of Punjab*,²² while following the decision in Ekka Ram's case, the court held that the convicts under the NDPS Act are entitled to special remissions granted by the State under Article 161 of the Constitution of India. In *Charanjit Singh v. The State of Punjab*,²³ the court again considered the aforesaid question with regard to the eligibility of grant of special remissions to the convicts undergoing imprisonment. The Court by following the decision of Ekka Ram's case allowed the benefit of remissions under the Circulars issued by the State Government under Article 161 of the Constitution of India.

¹⁹ Administrative Reforms Commission Report Vol. 1, Sept. 1967, pp. 272-273

²⁰ AIR (1977) SC 1361

²¹ CrI.W.P.No.729 of 2005

²² CrI.W.P.No.2084 of 2010

²³ 2011(1) RCR (CrI.) 75

Hence, it is important to note that the governor is known to be the connecting link with of the State and the Center and the President is the first citizen of the country itself. Thus, the powers and functions performed are crucial and extensive in nature.

EXECUTIVE POWER

The **Article 53** of the Constitution provides for the executive power of the President under which he has the supreme command on the Defense Forces and the President can regulate any or every law regarding the same. Under this power, the President has the power to sign or veto legislation, command the armed forces, ask for the written opinion of their Cabinet, convene or adjourn Congress, grant reprieves and pardons, and receive ambassadors. In *Amritlal v. F.N. Rana*,²⁴ it cannot however be assumed that the legislative functions are exclusively performed by the legislature, executive functions by the executive and judicial functions by the judiciary alone. The constitution has not made absolute or rigid divisions of function between the three agencies of the State.

LEGISLATIVE POWER

The President along with the council of ministers is both members of the parliament and participates intimately in the legislative making process. The President has the power to **convene** and **prorogue** to dissolve Lok Sabha. The President has the power to pass a bill and his assent is required for the transforming a bill passed by the two houses into an act.²⁵ The President has **ordinance making power** which empowers the President to promulgate ordinance as the circumstances which appear to require When both houses of the parliament are not in session; he is satisfied that the circumstances exist which render it necessary for him to take immediate action.²⁶ In *B.K. Sardarilal v. Union Of India*,²⁷ it was held that argument can be of any use to the petitioner. The constitutional prohibition contained in **clause (2) of Article 77** is absolute and, therefore, cannot be given a go-by by an admission that the respondents may choose to make. Conferment of jurisdiction and power on courts is regulated by provisions of law and not by the admissions made by the parties.

JUDICIAL POWERS

The President has the power to appoint the Chief Justice of Supreme of Court of India and other judges on the advice of the Chief Justice. The President can dismiss the judges if and only if the two Houses of the Parliament decides to pass resolutions to that effect that too by two-thirds majority of the members present. The President also has the right to grant pardon. The president

²⁴ 1964 AIR 648, 1964 SCR (5) 294

²⁵ <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1574&context=uclev>

²⁶ Article 123, the Constitution of India, 1950

²⁷ ILR 1968 Delhi 534

enjoys the judicial immunity and also no criminal proceedings can be initiated against the president during the term in office of the president is not answerable for the exercise of his/her duties.²⁸

EMERGENCY POWERS

The President has Emergency powers according to **Article 352, 356 and 360**. President may proclaim a state of emergency in the whole or part of India if he feels that a grave situation has arisen in which the security of India on part of its territory might get threatened by war or external aggression or rebellion.²⁹ During the financial emergency, the President gets the financial powers as well.

CONCLUSION

When the rule of the President has not been seen to be imposed in a state, the Governor often acted as a spokesperson of the centre. It has been observed that it seems that the Governor has now become puppet in the hands of the party which is ruling at the centre to control the State Governments. It has been observed that although the President of India has enormous powers but he can only exercise them with the advice of Prime Minister and Council of Ministers as provided under Article 73 and 74 of the Constitution. It is important to note that the President is the first citizen of India who is the protector of the entire nation per se. The Governor is the Constitutional Head of a State and hence, is dignified part of the Government as he is highly respected and is supposed to be a non-partisan functionary.³⁰ But, the way he is being used and respected depends upon him itself as to what extent he makes himself useful, dignified and non-controversial. Hence to make the Role of the Governors actually meaningful in the union and the state relations and for the maintenance the principles of parliamentary government, it is suggested that the exercise of 'discretionary powers' by the Governors should be 'guided by the healthy and democratic conventions' which may grow from time to time in the working of the Constitution thus, the Governor should not only be neutral but also seem to be neutral and much depends upon the political integrity of the Governor.³¹ Therefore, if he stands against the wishes of the Ministry, it will be an undemocratic act according to them but he should try keeping himself strong, in the sense, he should be impartial.

²⁸ Supra

²⁹ Article 352, the Constitution of India, 1950

³⁰ https://shodhganga.inflibnet.ac.in/bitstream/10603/132593/12/12_chapter%204.pdf

³¹ Ibid.