



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

EDITORIAL TEAM

EDITORS



Megha Middha

Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr. Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS

ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

GOVERNOR: A HINDRANCE IN SMOOTH FUNCTIONING OF DEMOCRACY

AUTHORED BY - KUMAR DHRUVA (A3256120082)

& UNNATI BALYAN (A3256120085)

Amity Law School, Amity University

Abstract:

Indian Democracy is the largest democracy in the entire world showcasing the immense power of the common people in the governance of a country. Democracy means governance by the people, for the people and of the People. The key purpose of democracy stands defeated when there is an involvement of an autocratic power in decision making. The governors of states in India are appointed by the President on the advice of Council of Ministers. The procedure of appointment hereby questions the democratic stance of a country as the Governor would be loyal to the Central Government who is indirectly involved in its appointment and not to the people of his state. My research attempts to understand this gap in a democratic set up and how it affects the overall State governance. Moreover, there have been various cases in the past which have shown that the Governors have misused their discretionary powers to fulfill their incentives. Some of these cases include SR Bommai vs Union of India, and the political crisis in the states of Arunachal Pradesh, Uttarakhand, and Bihar. Thus, my paper further focuses on these cases and their judgements to highlight the aspects in which Governor has proven to be a roadblock in smooth governance. The aim of my research is to analyze the previous cases and their judgements under the constitutional framework and understand that how a Governor who, has a powerful status in Indian Constitution, has quite often proven to be a hindrance in democratic governance of India.

Keywords: *Governor, Spirit-of-Nonpartisanship, Hindrance, Democracy, Autocracy.*

Introduction

Section 49 of Government of India Act, 1935 stated that the executive authority of a province shall be exercised by the governor. The governor was answerable to the king sitting in England. There was a lot of debate in the constituent assembly regarding the post of Governor. Pandit

Thakur Bhargava vehemently opposed upholding the post of governor, as he believed that powers vested with the governor were too discretionary in nature and the governor could function autocratically. The Constituent assembly adopted a lackadaisical approach with respect to the post of the governor. All the provisions relating to governor were passed in a single day. K.V Rao, an eminent political scientist said that the whole structure, along with provisions relating to governor, was designed in a manner that enabled the Congress to hold on to power for a long time. Tiruvellore Thattai Krishnamachari while speaking in the constituent assembly said: "I would at once disclaim all ideas at any rate so far as I am concerned, that we in the house want the future governor who is to be nominated by the president be in any sense an agent of the central government. I would like that point to be made very clear because such an idea finds no place in the scheme of government we envisage for the future"¹. K. Subba Rao also supported it and said that governor should not act as an agent of central government. B.R. Ambedkar emphatically believed that Center could intervene in the local matters/politics of the state when the government is not functioning in consonance with the provisions laid down for the constitutional governance of the state. He further refused to address the point raised by Pandit Thakur Das Bhargava.

To understand the role of a Governor it is imperative to review the definitions as provided in Articles 153-156 in the Indian Constitution. Article 153, Governor of states – There shall be a governor for each state: [provided that nothing in this article shall prevent the appointment of the same person as governor of two or more states].² Article 154, Executive power of the state shall be vested with the governor and shall be exercised by him directly or through officers' subordinate to him in accordance with the constitution.³ Article 155, Appointment of governor, the Governor of a state shall be appointed by the President by warrant under his hand and seal.⁴ Article 156, Term of office of governor- (i) The governor shall hold office during the pleasure of the president.⁵

Hence, we can infer from the above articles that governor functions as a link between the union and the state governance, and acts in dual capacity both as constitutional head of the state as well as representative of the union. However, since its inception, the post of governor has not brought up any noteworthy positives to the functioning of the democracy instead it has amassed many

¹ https://shodhganga.inflibnet.ac.in/bitstream/10603/132593/12/12_chapter%204.pdf

² Constitution of India bare act

³ Constitution of India bare act

⁴ Constitution of India bare act

⁵ Constitution of India bare act

negatives. The post of governor has been reduced to a retirement package for most politicians, for being loyal and faithful to the government of the time. To highlight the power and responsibility of a governor, the importance of spirit of non-partisanship and discretionary powers of the governor have been discussed below.

Spirit of Nonpartisanship: The Central government is responsible to nominate the governor for each state. After his appointment by the President, governor starts working as an agent of the center. Hence, the doctrine of nonpartisanship gets destroyed by the constitution itself, due to the provisions laid down for his appointment. The power of the President and the governor is based on the role of a monarch in the Westminster system, where the monarch is above politics. This scenario cannot be applied to in India as Governors strive to play an active role in politics.

Discretionary Powers: B. R. Ambedkar, in his speech on constitutional role of the governor, described how the governor should use his discretion not as “representative of party” but as “representative of people”⁶. Article 356, that empowers the President to impose President’s rule in a state upon the recommendation of the Governor, is the most powerful discretionary power of the Governor. Article 356 has been derived from section 93 of the Government of India Act, 1935, which provided for Governor’s rule in the provinces.

There are numerous examples of how the governor has not enhanced the functioning of democracy and has instead tried to breakdown the constitutional mechanisms. History has testified to the flagrant misuse of Article 356 which has been revoked by the center multiple times so far. The hopes and beliefs of Dr B. R. Ambedkar in the post of Governor, have been repeatedly crushed and thrown to the winds. The landmark cases which highlight the autocracy of the governor at the cost of democracy have been analyzed below.

Sr Bommai Vs Union of India [1994]2 Scr 644: Air 1994 Sc 1918:(1994) Scc 1:

SR Bommai was the Chief Minister of the government formed by Janta Dal Party in Karnataka between August’ 98 and April’ 89. His government was dismissed under article 356 on 21st April 1989, as they lost their majority owing to large number of defections from the party. Governor P. Venkatasubbaiah did not give an opportunity to Bommai to prove majority in the floor test. Bommai went to court against governor’s decision to recommend president’s rule. The High

⁶ <https://www.manifestias.com/2019/04/18/office-of-the-governor-and-its-misuse/>

Court dismissed his writ petition, which forced him to appeal to the Supreme Court.

Supreme Court Judgement: On March 11, 1994, a nine-judge bench of Supreme Court issued a historic order. The verdict concluded that the power of president to dismiss a state assembly is not absolute. The judgement said that the President should exercise the power only after his proclamation is approved by both the houses of the parliament. This verdict put an end to the arbitrary dismissal of the state government by the central government. The verdict also ruled that the floor of the assembly is the only forum that should test the majority of government of the day, and not the subjective opinion of the governor, who is often referred to as an agent of the central government.

The first instance of the impact of the case was seen when, the Vajpayee government in 1999 was forced to reinstate a government it dismissed. The Rabri Devi government which was sacked on February 12, 1999 was reinstated on March 8, 1999 when it became obvious that central government would suffer a defeat in the Rajya Sabha over the issue.

Arunachal Pradesh Political Crisis

Arunachal Pradesh was in deep constitutional turmoil between November 2015 and March 2016.

The ruling party was Congress and had a majority of 47 members, while BJP was the lead opposition with 11 members aided by 2 independent members. On 3rd of November 2015, the 11 BJP members and 2 independent members asked the governor for:

1. Removal of the speaker of the assembly i.e. Nabam Rebia.
2. Preponing of the next session of the assembly.

On 16th December, the assembly was called which was attended by only 33 MLAs. The house passed a resolution to remove the speaker. On the next day of the session, which was held in a hotel, Nabam Tuki was removed as the Chief Minister, and Kalikho Pul was made the Chief Minister. Pul was the leader of the congress members who had rebelled and were 14 in total. The Governor also demanded for president's rule. Nabam Rebia moved to the High court regarding preponement of the joint session and the related events.

High Court Judgement: The Guwahati High Court ruled that neither the governor's discretion nor

the proceedings of the assembly could be challenged in the court of law under Article 163 and Article 212 of the constitution. As a result, the court held that the actions of the assembly and the governors were totally legitimate and within the law. Nebam Rebia subsequently moved to the Supreme Court regarding the same.

Supreme Court Judgement: The Constitutional bench of Supreme Court unanimously quashed Arunachal Pradesh governor's order to prepone the assembly session from January 14, 2016 to December 16, 2015. Justice Khehar mentioned "governor cannot require the speaker to discharge his functions in the manner he considers constitutionally appropriate"⁷. The court also held that what happens within the four walls of a political party is none of governor's concern and he must work in a free and independent manner. Owing to the judgement, the Nabam Tuki government was restored in the state of Arunachal Pradesh.

Uttarakhand Political Crisis:

On 18th March 2016, 9 rebel congress MLAs joined BJP and demanded for division of vote. If the budget had failed to pass, the Harish Rawat government would have fallen, since the issue in question was a case of money bill. But the speaker refused division of votes and passed the bill by voice note. The rebel congress leaders and the BJP went to the governor demanding dissolution of the assembly. The then Governor (Krishan Kant Paul) announced a suspended animation in the house, that meant that the house was not dissolved but the Harish Rawat government had to pass the floor test by 28th March. The governor sent his report of the current situation to the union cabinet. The Union Cabinet recommended the President for the imposition of the President's rule in the state. This inflamed Congress, who moved to High court.

High Court Judgement: The High Court bench, consisting of chief justice KM Joseph and justice VK Bist, said: "Even the President can go wrong"⁸. They further added that we do not follow any kingship or absolutism, Law is above all. The High Court also slammed the Center saying that it was working as private company, which is quite dangerous for smooth functioning of the democracy. It was also made clear that that even decisions of the President and the Governor can come under Judicial Review. This decision was then appealed in the Supreme Court.

Supreme Court Judgement: The Supreme court ruled that the floor test was a mandatory

⁷ <https://www.thehindu.com/news/national/SC-quashes-Arunachal-Governors-order-restores-Tuki-govt.-to-power/article14486816.ece>

⁸ <https://www.indiatoday.in/india/story/even-president-can-go-wrong-uttarakhand-high-court-to-centre-318921-2016-04-20>

procedure before the dissolution of the assembly and President's rule can be lifted for one or two days for conduct of floor test. Hence, as a result, the floor test was conducted in the state of Uttarakhand, and the Harish Rawat led congress government returned to power.

Bihar Political Crisis:

As no party got the required mandate, Bihar witnessed a hung assembly in 2005 general assembly elections. On March 6th, Bihar was put under president's rule. After a month and a half, NDA claimed that it has the numbers to form the government having support of 115 MLAs, out of 243 constituencies in total. Governor Buta Singh on April 27th wrote a letter to the congress ruled central government that NDA was horse-trading Lok Janshakti party members to stake claim to form the government. The governor recommended for dissolution of the assembly. The union cabinet accepted the recommendation. The letter of dissolution was sent to then president APJ Abdul Kalam who was in Moscow during those days. At midnight, APJ Abdul Kalam signed the dissolution letter and the Bihar assembly was dissolved.

Elections were again held in Bihar in October and November and it resulted in a Nitish Kumar led NDA coming to power displacing the regime of Lalu Prasad led RJD.

Supreme Court Judgement: When the case came to the notice of Supreme court, Supreme Court rapped Bihar's Governor Buta Singh. Then Chief Justice of India Y K Sabharwal observed: "All canons of propriety were thrown to the wind Undue haste made by the governor smacks of mala fide intent."⁹ The Supreme Court also judged that there was nothing that can justify the act of the governor and hence was totally undemocratic. The Supreme Court also said that the council of ministers should verify the reports of the governor instead of just trying to topple the state government machineries. The Supreme Court held that Buta Singh clearly mislead the council of ministers by his incompetent reports.

The magnitude of mala fide intent in dissolving the assembly of Bihar can be seen from the fact that after the Supreme Court judgement, APJ Abdul Kalam wanted to resign as he knew he has assented to something that was totally unconstitutional.

The aforementioned cases are the witness of the autocratic power of the Governor and its impact

⁹ <https://www.financialexpress.com/india-news/throwback-when-supreme-court-rapped-bihar-governor-buta-singh-for-malafide-role-in-government-formation-in-2005/1171327/>

on the Indian democracy. Urgent actions are needed to save the principal purpose of democracy and put things under control. Some measures have been recommended below which could prove beneficial in the rectification of the loopholes in the functioning of the Governor.

Measures and Suggestions

There is an urgent need to improve the functioning of mechanism of governor in a state, as abolishment of the post of governor is an objectionable idea that will hamper the federalist structure in India. So, a better approach would be to formulate a policy on how a governor can become an independent body in practise, akin to what it is on paper.

My first recommendation is to conduct indirect election for the post of governor, wherein the voters will be from legislative assembly and legislative council (if applicable). This would aim to diminish Center's role in appointment of the governor and its control over the Governor. The governor can also work independently without pressure from Center. Policy of non-partisanship would be of a significant value if ensued and followed.

There should be a change in procedure for the removal of the governor as well. Currently he holds the office in accordance with the pleasure of the president, which restricts his independent functioning as he takes decision under the influence of the Union Executive. My next recommendation is to implement a fixed tenure for the governor which includes an impeachment process, not by the union legislature, but by the state legislature itself, similar to the process of impeachment of President at the Union level.

We can also draw some recommendations from the Sarkaria commission and the Punchi commission to rectify the defects in the functioning of governors of the state. Sarkaria commission recommended that the governor must not have participated in active politics before his appointment for the same. The Sarkaria commission also recommended that if the Center and the State is ruled by two different political parties then governor should not belong to ruling party at the Center. But in current scenario this practise is hardly followed. It was also recommended by the Sarkaria commission that the Chief Minister of the state shall be consulted for appointing the governor of the state. Punchi commission recommended that doctrine of pleasure should be deleted from the constitution. It also recommended a committee to be established for appointment of the governor. The committee must include Prime Minister, Home Minister, speaker of Lok

Sabha, and Chief Minister of state. The Vice President can also be involved. Idea of addition of speaker of legislative assembly to the committee was also recommended to make the proportion balanced.

In constituent assembly, Biswanath Das, who was against the post of governor mentioned “that democracy and autocracy cannot function together”¹⁰. It is high time to act against autocracy for the betterment of democracy. Governor is an important constitutional body for proper functioning of democracy but, if it is not allowed to work independently, it can be the key reason for constitutional failures across the states.



¹⁰ https://shodhganga.inflibnet.ac.in/bitstream/10603/132593/12/12_chapter%204.pdf