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INTRODUCTION TO FEDERALISM AND THE OFFICE OF THE GOVERNOR

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INTRODUCTION

Federalism is a political concept and governing mechanism that refers to a system in which a central authority and multiple constituent units share power in accordance with the constitution. The goal of this division is to accommodate the diversity that comes with vast, multicultural communities. It provides a structural foundation for cooperative governance by striking a balance between regional power and unity. Federalism has been critical to preserving India's integrity, a country known for its linguistic, religious, cultural, and geographic variety. However, India's federalism is unusual in that it blends parts of both systems to form a quasi-federal structure rather than being fully federal or unitary.

In this unique federal arrangement, the governor's position is crucial. The governor serves as a critical channel between the federal government and state governments as the head of state under the constitution. Due to his dual role as the constitutional leader of a State and a representative of the President (and thus the Center), the governor occupies a central position in India's federal structure. The Governor has significant discretionary power despite the role's largely ceremonial nature, which has regularly placed him at the center of political and academic debate.

The goal of this chapter is to set the stage for a thorough examination of the governor's function in Indian federalism. It starts by analyzing the idea of federalism, following its development, looking at the Indian federalism model, and placing the constitutional basis and duties of the governor's position in context. The chapter also describes the dissertation's goals, approach, structure, and justification.

EVOLUTION OF FEDERALISM: A CONCEPTUAL OVERVIEW

The need to accommodate various identities under a single political framework gave rise to federalism. It evolved historically as a response to the drawbacks of both highly fragmented confederations and centralized monarchs. The American Constitution of 1787, which established

a powerful federal government while maintaining state autonomy, is frequently considered as the first modern federal constitution.

Numerous tiers of government, a written constitution, constitutional supremacy, an independent judiciary, and a delineated division of powers are characteristics of classical federalism. Thus, decentralization, autonomy, and cooperation are the cornerstones of federalism. Over time, several forms of federalism have emerged, each representing a distinct dynamic of intergovernmental relations. These include dual federalism, cooperative federalism, competitive federalism, and asymmetric federalism.

FEDERALISM IN THE INDIAN CONTEXT

India created a federal system that was tailored to its unique political, social, and historical context. The Constitution's designers sought to create a powerful central government while granting states autonomy, drawing on British colonial history and administrative expertise gained during the Government of India Acts of 1919 and 1935. Maintaining integrity and harmony in a diverse and complex community was the aim.

The Indian Constitution is "federal in form but unitary in essence," according to Dr. B.R. Ambedkar. This sums up India's quasi-federal nature, in which the central government is given primary responsibility over issues of national significance, particularly in emergency situations. The focus on centralization is shown in articles like 246 (distribution of legislative powers), 256 to 263 (administrative relations), and 352 to 360 (emergency provisions).

However, the importance of states in the federal system is recognized by the Constitution. The federal nature of Indian politics is influenced by the existence of a distinct legislative and administrative branch at the state level, the division of powers outlined in the Seventh Schedule, and the Rajya Sabha's function as the state's representative. However, disagreements about the degree of autonomy granted to the states have often surfaced, with the governor's role at the heart of these discussions.

HISTORICAL EVOLUTION OF THE OFFICE OF THE GOVERNOR

In India, the governor's post dates back to the colonial era. The Governors served as representatives of British authority in the provinces and were chosen by the Crown under British rule. The contemporary function of governors was established by the Government of India Act, 1935, which gave them significant discretionary authority and established them as key players in province governance.

The Constituent Assembly maintained the Governor's position after independence, but it redefined its function within the democratic framework of the Republic of India. Like the President in the Center, the Governor was intended to be a constitutional leader who would operate with the Council of Ministers' guidance and support. Nonetheless, the Constitution gave the governor discretionary authority, especially when the standard democratic procedure was impractical.

There has been ongoing constitutional and political discussion over how to strike a balance between the governor's ceremonial and discretionary responsibilities. Over time, the position has changed in response to commission recommendations, judicial rulings, and shifting political conditions.

CONSTITUTIONAL FRAMEWORK OF THE GOVERNOR'S OFFICE

The President of the Center and the Governor of each State are the nominal heads of their respective governments under the Indian Constitution, which calls for a parliamentary system of government in both the Union and the States. The Governor is chosen by the President to act as the Center's representative in each state, even though the President is elected. By carrying out ceremonial and discretionary duties, the governor serves as a constitutional liaison between the federal government and the state governments.

Most of the provisions pertaining to the governor are found in Articles 153 to 162 of the Constitution. The Governor's role is also mentioned in or related to other articles of the Constitution, including Articles 163, 164, 165, 200, 201, 213, and 356. These constitutional clauses create the office and specify its composition, authority, and duties.

This chapter aims to give a thorough explanation of these constitutional clauses, emphasizing the Governor's intended function, how it has changed over time due to court interpretation and practice, and how it affects Indian federalism.

Article 153: State Governors

The fundamental clause that requires each state to have a governor is Article 153. It says: "Every State must have a Governor, except in cases when this article prohibits the selection of the same individual to serve as Governor of two or more States."

This provision demonstrates that the position is required by the constitution in each state. Additionally, the proviso allows one person to hold the office of governor for several states at the same time. This has been applied in practice, particularly for smaller Northeastern states when Governors are selected concurrently to oversee different regions. Although administratively efficient, it poses questions regarding state-specific governance and proper representation.

Article 154: Executive Power of the State

Article 154 vests the executive power of the state in the Governor, like how the President holds executive power at the Union level. It reads:

“(1) The executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.

(2) Nothing in this article shall—

(a) be deemed to transfer to the Governor any functions conferred by any existing law on any other authority; or

(b) prevent Parliament or the Legislature of the State from conferring by law functions on any authority subordinate to the Governor.”

While the Governor is the formal head, this power is implemented in practice by the Council of Ministers, which is led by the Chief Minister. Thus, Article 154 establishes the Governor's ceremonial involvement in executive matters, subject to constitutional restrictions and court interpretations.

Article 155: Appointment of Governor

The President appoints the Governor by issuing a warrant bearing his signature. "The Governor of a State must be appointed by the President by warrant under his hand and seal," the clause states.

Despite its apparent simplicity, this clause has drawn criticism and reform suggestions. In reality, these selections are made at the discretion of the central government, which counsels the president. Allegations of partisanship have frequently resulted from the lack of interaction with state governments, especially in cases where governors are political appointees or retired bureaucrats with established connections.

To maintain impartiality and respect federal values, the Sarkaria Commission (1988) and Punchhi Commission (2010) both suggested a more consultative procedure that included the Chief Minister and other state leaders.

Article 156: Term of Office of Governor

Article 156 governs the tenure of the Governor:

“(1) The Governor shall hold office during the pleasure of the President.

(2) The Governor may, by writing under his hand addressed to the President, resign his office.

(3) Subject to the foregoing provisions of this article, a Governor shall hold office for a term of five years from the date on which he enters upon his office."

The wording "during the pleasure of the President" implies that the Governor can be removed at any time, with no reason or justification. While this strengthens the Governor's reliance on the Union executive, it undermines the office's independence and neutrality. The **B.P. Singhal v. Union of India (2010)** case emphasized that, while the Governor serves at the leisure of the President, dismissal from office cannot be arbitrary, capricious, or unreasonable.

Article 157 & 158: Qualifications and Conditions of Office

These two articles lay down the eligibility criteria and conditions of service.

Article 157 states that a person must:

- Be a citizen of India, and
- Have completed 35 years of age.

Article 158 elaborates that:

- A Governor shall not be a member of either House of Parliament or a State Legislature.
- Shall not hold any other office of profit.
- Entitles the Governor to an emolument determined by Parliament.

These provisions aim to preserve the impartiality and dignity of the office. However, in practice, political appointees often continue to influence state affairs post-tenure, blurring these constitutional boundaries.

Article 159: Oath or Affirmation by the Governor

The Chief Justice of the High Court or, in his absence, the senior judge, shall administer an oath to the Governor prior to his taking office. The oath affirms a commitment to the Constitution and the duty to protect its integrity.

This ceremonial element reinforces the Governor's constitutional duties and has symbolic significance. However, when governors are accused of going beyond or against the spirit of the constitution, controversy frequently results.

Article 161: Power to Grant Pardons

Under Article 161, the Governor has the authority to give pardons, reprieves, respites, or remissions of punishment for violations of laws relating to the State's executive power.

This power, which duplicates the President's powers under Article 72, has been subject to judicial examination. For example, in the **Rajiv Gandhi assassination case**, the Governor of Tamil Nadu

invoked this provision, causing friction with the Centre and sparking controversy over the scope of executive clemency powers at the state level.

Article 162: Extent of Executive Power of State

This Article clarifies the scope of the executive power vested in 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.”

Thus, it draws the jurisdictional boundary of the Governor’s executive authority, affirming that it applies only to the State List and the Concurrent List, subject to constitutional limitations.

Article 163: Council of Ministers to Aid and Advise the Governor

A critical provision, Article 163, establishes the relationship between the Governor and the State executive:

“There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is required to exercise his functions at his discretion.”

The Governor's discretionary power, albeit restricted, has been the most contentious aspect of his authority. There is no full list of discretionary functions, which has sparked legal and scholarly controversies. Instances include choices to invite a party to form government in a hung assembly or to recommend President's Rule.

Article 164: Appointment of Chief Minister and Other Ministers

This Article specifies that the Governor will designate the Chief Minister and, on their advice, other ministries. It further states that ministers would hold office at the pleasure of the Governor.

Although this promises significant influence, in fact, the Governor must appoint the leader of the dominant party or coalition as Chief Minister. However, in unclear situations (e.g., hung assemblies), the Governor's discretion is questioned, as seen in **Maharashtra (2019)** and **Karnataka (2018)**.

Article 200 & 201: Assent to Bills

Under Article 200, the Governor has the power to:

- Assent to a bill,
- Withhold assent,
- Reserve the bill for the President's consideration, or
- Return the bill (if not a money bill) for reconsideration.

Article 201 states that when a law is reserved for the President's consideration, the President may assent or withhold assent.

This power is intended to serve as a constitutional check, but in practice, governors have frequently delayed or withdrawn assent to measures enacted by state legislatures, resulting in federal conflict. Recent examples of problematic gubernatorial assent include **Tamil Nadu's anti-NEET bill** and **Punjab's farm laws**.

Article 213: Ordinance-Making Power of the Governor

When the State Legislature is not in session and quick action is required, the Governor may issue ordinances under Article 213. This power is similar to the President's power under Article 123.

While meant for exigencies, this power has at times been misused for bypassing legislative scrutiny, raising concerns about its compatibility with democratic norms.

Article 356: Governor's Report and President's Rule

Article 356 is a hotly discussed article that allows the President to impose President's Rule based on the Governor's report or otherwise if the state's constitutional machinery fails.

The **S.R. Bommai case (1994)** limited arbitrary invocation of Article 356 and highlighted that the Governor's report must be based on objective evidence.

Despite court safeguards, this provision continues to be a source of contention between the Centre and the States, particularly when opposition parties are in power.

Judicial Interpretations and Doctrinal Developments

The role and powers of the Governor have been clarified and restricted by various Supreme Court judgments:

- ***Samsher Singh v. State of Punjab (1974)***: Reiterated that the Governor is bound by the advice of the Council of Ministers.
- ***Rameshwar Prasad v. Union of India (2006)***: Held that dissolution of the House without testing the majority is unconstitutional.
- ***Nabam Rebia v. Deputy Speaker (2016)***: Clarified that the Governor cannot act in matters within the domain of the legislature, reaffirming constitutional morality.

THE GOVERNOR'S ROLE IN COOPERATIVE FEDERALISM

The importance of collaboration and cooperation between the Center and the States is emphasized by the cooperative vision of Indian federalism. Being a constitutional official at the intersection of

the State and Union governments, the Governor is in a unique position to encourage this cooperation.

The governor should ideally act as an unbiased adjudicator who fosters harmony amongst the various tiers of government. However, practical reality has repeatedly departed from this ideal. Calls for reform and criticism have been raised by the idea that governors are instruments of the central government rather than autonomous constitutional leaders.

Governors must operate impartially and in conformity with federalist principles, according to a number of constitutional experts and commissions. The Sarkaria Commission recommended an open, consultative appointment process and an apolitical governorship.

CONCLUSION

The constitutional provisions concerning the Governor provide a robust framework for state-level executive authority. However, the practice has often deviated from the constitutional spirit. While the Governor is expected to be an impartial and apolitical figure, the reality reflects tensions arising from discretionary powers, political appointments, and central influence.

These strains jeopardize the federal equilibrium envisioned by the Constitution. Strengthening constitutional morals, supporting cooperative federalism, and carefully adhering to legal precedents are critical to restoring the sanctity of the position and ensuring that the Governor acts as a true constitutional sentinel rather than a political operative.

The Governor's office, which is ingrained in India's federal system, has a significant impact on the dynamics between the Centre and the states. While the Governor is constitutionally intended to be a neutral and ceremonial head of state, practical realities have sometimes diverged from this vision, resulting in disagreements and discussions concerning the propriety and efficacy of his acts. As the Indian polity evolves, so should the understanding and operation of this office.

A detailed and critical examination of the Governor's role is therefore essential for strengthening Indian federalism. This dissertation endeavors to contribute to that understanding by examining the historical, constitutional, and political dimensions of the office, and by offering constructive suggestions for its reform and revitalization.

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