

At whose discretion?

Kerala Governor P. Sathasivam is not the first governor to omit parts of a speech prepared by the government of the day in his address to the Assembly. Last year, Tripura Governor Tathagata Roy skipped portions of his address containing critical remarks drafted by the Left Front government against the Centre on the communal situation in the country. In March 1969, Punjab Chief Minister Gurnam Singh staved off a controversy by agreeing to a request by Governor D.C. Pavate to remove remarks critical of the Union government. In *Governor's Role in the Indian Constitution* (1992), Sibraranjan Chatterjee notes that in the early 1980s, following Governor A.P. Sharma's objection, the West Bengal government omitted a reference to the appointment of the Calcutta University Vice-Chancellor. However, he agreed to read another portion related to IMF conditionalities he had reservations about.

Does such an omission violate any constitutional convention? The debate has not been conclusively decided.

In *Shamsher Singh v. State of Punjab*, the Supreme Court quoted the opinion of the first Attorney General of India, M.C. Setalvad, that the principle that the President (or the Governor) is guided by the aid and advice of the Cabinet covered every function "whether it relates to addressing the House or returning a Bill for reconsideration, or assenting or withholding assent".

In his book, Chatterjee notes that "it was the intention of the Constitution-makers that the Governor's speech would be prepared by the Council of Ministers and the Governor would read it." He says, "Any attempt to violate this... would amount to breach of the spirit of the Constitution, if not its word... If a Governor violates this convention and deletes any para of the address under the cloak of his discretionary power, his action may not be 'unlawful' from a rigid legalistic viewpoint; but this will surely strike at the roots of [the] norms of parliamentary system of government."

A controversy arose when Governor Dharma Vira skipped two paragraphs in his address to the joint session of the West Bengal legislature on March 6, 1969. The portions omitted contained critical references to the events culminating in the dismissal of the Ajoy Kumar Mukherjee ministry in 1967. Parties in the opposition termed the Governor's action unlawful and unconstitutional. However, some MPs and political leaders defended the Governor on the ground that the paragraphs impliedly ridiculed a High Court judgment that had upheld the Governor's actions, and that the Governor had no option but to omit the portions as he had a constitutional obligation to protect the High Court's position.

On this issue, Chatterjee says Dharma Vira's action was not unlawful, nor did it violate established convention. Just as he had an obligation to read out the speech prepared by the government, the Council of Ministers too had an obligation not to include any remark about the Governor's own past actions. In other words, when the speech is confined to matters of policy, the Governor will have to read it in its entirety regardless of his opinion, but when it contains irrelevant words that would be inappropriate for him to read, he may omit them at the risk of inviting criticism.

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