

# THE GOVERNOR IS UNDER THE CONSTITUTION, NOT ABOVE IT

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In recent years, there has been a grave erosion of constitutional provisions, constitutional morality, and constitutional ethos being witnessed among various constitutional bodies. If the manner of functioning by institutions such as the Election Commission of India and the Comptroller and Auditor General of India has left much to be desired, the [conduct of the Governors](#) of some States (especially where there are [non-Bharatiya Janata Party governments](#)) has made a complete mockery of the Constitution and its limitations.

Article 153 provides a [Governor](#) for each State, and by virtue of Article 154, [the executive power of the State shall be vested in the Governor](#) (“Shall be exercised by him directly or through officers subordinate to him in accordance with this Constitution”). However, Article 154(2)(a) prohibits the Governor from exercising any function “conferred by existing law on any other Authority”. Article 163 categorically provides that “there shall be a council of ministers with the Chief Minister at the head to aid and advise the Governor... except in so far as he is by or under this Constitution required to exercise his function or any of them in his discretion”.

The Supreme Court, in *Shamsher Singh vs State of Punjab and Anr.*, decided on this issue in 1974: The Governor exercises “all his powers and functions” by making rules for the convenient transactions of the business of the government of the State in accordance with Article 166 of the Constitution. These are called Rules of Business. The Court however amplified that “wherever the constitution requires satisfaction of the President or the Governor for the exercise of any power or function by the President or the Governor, as the case may be, as for example in Articles 123, 213, 311(2) proviso (c), 317, 352(1), 356 and 360. The satisfaction required by the Constitution .... is the satisfaction of the President or of the Governor in the Constitutional sense under the Cabinet system of the Government”. The Court went on to hold that “the discretion conferred on the Governor means that as the Constitutional or the formal head of the State, the power is vested in him” and that it is only in the exercise of the power under Article 356 that the Governor will be justified in exercising his discretion even against the aid and advice of his council of ministers as per his discretionary power but, in all other matters where the Governor acts in his discretion, he will act in harmony with his Council of Ministers. The Constitution does not aim at providing a parallel administration....” The basic philosophy is that in a democracy, the elected Ministers must accept responsibility for every executive act and that the Council of

Ministers alone represents a responsible form of government in the States.

The Constituent Assembly debates are a clear pointer. In 1949, Prof. K.T. Shah debating Article 130 (now Article 154) said: "... the Constitution should make it imperative upon the Governor to use its power in accordance with the Constitution and the Law, that is to say, on the advice of his Ministers as provided for in the subsequent clauses and in other parts of the Constitution." It was hotly debated whether the Governor should be appointed by the President of India or should be elected. Fearing that this would create a parallel State leadership, the Assembly instead adopted appointment by the President. B.G. Kher said: "... a Governor can do a great deal of good if he is a good Governor and he can do a great deal of mischief, if he is a bad Governor, in spite of the very little power given to him under the Constitution....." P.K. Sen said, "... The question is whether by interfering, the Governor would be upholding the democratic idea or subverting it. It would really be a surrender of democracy... We have decided that the Governor should be a constitutional head... he would be the person really to lubricate the machinery and to see to it that all the wheels are going well by reason not of his interference, but his friendly intervention."

Vishwanath Das said, "I have my bitter experiences in this regard. I was the Prime Minister of a province and I know how the Governor of my province was out to break my party... You cannot have democracy and autocracy functioning together." K.M. Munshi said, "... All things considered, it would be better to have a Governor nominated by the Centre, who is free from the passions and jealousies of local party politics."

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B.R. Ambedkar, who rose to respond on May 31, 1949, said, "The Drafting Committee felt as everybody in this House knows, that the Governor is not to have any kind of functions — to use a familiar phraseology, no functions which he is required to discharge either in his discretion or in his individual judgment. ... According to the principles of the New Constitution, he is required to follow the advice of his ministry in all matters... Therefore... the real issue before the House is not nomination or election, but what powers you propose to give to your Governor. If the Governor is a purely constitutional Governor with no more powers than what we contemplate expressly to give him in the Act... I personally do not see any very fundamental objection to the principle of nomination."

While debating Article 143 (now Article 163) on June 1, 1949, Prof. K.T. Shah said, "Whatever may be the procedure or convention within the Cabinet itself, however, the decisions of the Cabinet may be taken, so far as the Governor is concerned, I take it that the responsibility would be of the Chief Minister who will advise also about the appointment of his colleagues or their removal if it should be necessary." Defending the discretionary power given to the Governor under this Article, B.R. Ambedkar amply clarified the position by saying, "The clause is a very limited clause. It says: 'except in so far as he is by or under this Constitution'. Therefore, Article 143 will have to be read in conjunction with such other articles which specifically reserve the power to the Governor. It is not a general clause giving the Governor power to disregard the advice of his ministers in any matter in which he finds he ought to disregard."

Repealing the doubts of a Member on the powers of the Governor (Article 147, now Article 167) Dr. Ambedkar, "I cannot see what sort of interference that would constitute in the administration of the affairs of the Government... All that the Article does is to place the Governor in a position to enable him to perform what I say ... but the duties which every good Governor ought to discharge."

T.T. Krishnamachari, the member of the drafting Committee said, "... If my honourable friend

understands that the Governor cannot act on his own, he can only act on the advice of the Ministry, then the whole picture will fall clearly in its proper place before him...”

These debates give us sufficient indication of the role, the powers, and the duties of the Governor. Certainly, the Governor has no powers to interfere with the administration in day-to-day affairs including to refuse assent to Bills passed by the Assembly. But what is happening today, especially in Opposition-ruled States is a shocking disregard by Governors for the Constitution. Surprisingly, the Governors in BJP-ruled States are singularly silent on any issues demanding the discharge of their duties. While it is perhaps understandable why the Central Bureau of Investigation, the Enforcement Directorate and other investigative agencies are functioning the way they do, it is difficult to understand at all how some Governors are functioning as they are now.

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One can only hope and trust that the situation will be remedied by the judiciary at the earliest. It is only then that the rot can be stemmed.

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