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## ROLE OF GOVERNOR VIS-À-VIS COOPERATIVE FEDERALISM

### INTRODUCTION

India, since independence, has opted for quasi-federal structure. There is no such term as ‘federal’ in the Constitution of India but the working of Indian democracy is basically federal in structure and therefore, this practical working style of federalism brought forward the different categories of federalism.

Federalism simply means a mode of government which combines the general government i.e. central government with the regional government i.e. state governments, in a single political system but along with this, it also divides power among the two. It means that power or authority is vested in Union when it comes to matters of national importance and the matters of local concern remains with the States. These sets of government are independent but coordinated and are neither subordinate nor dependent.

### KINDS OF FEDERALISM

There are different types of federalism observed and are as follows:-

1. **Centralized Federalism**:-This emphasizes on the idea that the Central government should make policies and the State governments will be responsible for the execution of the same. It means that federal government should be responsible for setting all the national policies and on the contrary, the state and local governments should be responsible for carrying out such policies. The best examples of centralized federalism are France and Great Britain.
2. **Competitive Federalism**:-This type of federalism creates competition between a central government and state governments. The competition is mostly regarding the levelling of the overlapping between two or more state governments in order to advocate for better and common economic interests. It is known that for a successful economy to be carried on, there exists healthy competition between governments which

is beneficial. It turns into competitive federalism when this competition exists between members of a federation.

3. **Marble Cake Federalism**:-It is a swirly part which symbolizes cooperative federalism and in this type for federalism the powers between the two sets of governments are not divided rather they are shared by all levels of governments.
4. **Layer Cake Federalism**:-This is a category of federalism which symbolises dual federalism because the state governments and the national government have different and distinct powers which are represented by different layers.
5. **Fiscal Federalism**:-It simply refers to the use of funds which are allocated from the national government to the state governments in order to support national programs. A good example is the categorical grant i.e. the national government gives money to the states and such money has requirements attached to it.
6. **Cooperative Federalism**:-This type of federalism comprises the federal government and the state governments cooperating together during the nation's overall development. Here, both the governments do have horizontal engagement, where they cooperate in the larger public interests. Cooperative federalism is a top-down approach in which the government is providing the policy framework and inputs but the state governments have responsibility of its execution. Cooperative federalism is the part of basic structure in the Indian Constitution. The examples are as follows:-GST, 14<sup>th</sup> Finance Commission's 42% devolution, NAM, etc.

## **CONSTITUTIONAL POSITION**

The constitutional provision of Governor is same as that of the President in relation to the legislature and administration. He occupies the position of a representative of the Union in the States as he owes his appointment to the President and continues to hold his office at the President's discretion.

The general rule is that the Governor must act on aid and advice of his Council of Ministers as provided under Article 163(1) but there lies certain exceptions to this rule. According to Article 163(2), whenever any question arises that whether any matter is or is not a matter for which the Governor is required to act in his discretion under Constitution, the decision of the Governor shall be final and the validity of his decision cannot be questioned in a court of law. The word "in his discretion" is used in reference to special responsibilities of Governor such as under Article 371-A (1) (b) and (d) and 2(b) and 2(f) and paragraph 9(2) and 18(3) in the sixth schedule of the Constitution of India.

According to Article 239(2), the Governor is bound to exercise his functions as an administrator independent by of his Council of Minister where he is appointed as an administrator of an adjoining Union Territory. The Governor will be justified in exercising his discretion in making a report under Article 356 even against the aid and advice of his Council of Ministers. It is only because the failure of constitutional machinery may be because of the conduct of the Council of Ministers. Even in Article 200, a Governor may act in reserving a Bill for the consideration of the President irrespective of any advice given to him by his Council of Ministers.

## **POWERS OF GOVERNOR**

The various powers vested in the Governor are as follows:-

1. **Executive Powers**:-Article 154 of the Constitution of India states that the executive power of a State is vested in the Governor of that State and such powers can be directly exercised by him or even he can exercise the same through officers subordinate to him. This power of the State extends to those matters for which the legislature of the State has power to make laws.

Every executive actions of the State Government must be expressed to be taken in the name of the Governor and in continuity of the same all orders and instruments must be authenticated as per the rules specified by the Governor. Such authenticated orders and instruments cannot be questioned in a court of law on the ground that it was not made or executed by the Governor as mentioned in Article 166(1) and (2) of the same. However, these provisions are not mandatory rather directory. So, it means that even if such orders or instruments are not as per these provisions, it is not invalid. Further, it must be proved under Article 166(3) that such action was made by the appropriate authority and if not proved so then it can be challenged in the court on the ground of Article 166(2).

The Supreme Court, in case of *B.L. Cotton Mills vs. State of West Bengal*<sup>1</sup>, held that the Governor, under Article 166(3), is authorised to make rules for more convenient transaction of the business of the Government of the State and for the allocation of the same among Ministers.

In the case of *Ram Jawaya Kapur vs. State of Punjab*<sup>2</sup>, it was held by the Supreme Court that our Constitution has adopted the parliamentary form of government having

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<sup>1</sup> *B.L. Cotton Mills vs. State of West Bengal*, AIR 1967 SC 1145

<sup>2</sup> *Ram Jawaya Kapur vs. State of Punjab*, AIR 1955 S.C. 549

its basic principle that President and Governors are constitutional heads and real executed power is with the Council of Ministers.

It was held by the Supreme Court in *Shamsher Singh vs. State of Punjab*<sup>3</sup>, that the President and Governors are mere constitutional Heads and their powers are exercised with the aid and advice of the Council of Ministers and not personally except in those cases where the Governor is constitutionally required to act in his discretion. The court further held that a Governor can allocate the business of the Government of the Ministers and it cannot be said as delegation rather it is an exercise of executive powers by the Governor through those Council of Ministers or officers who are under the rule of business.

Thus, it is clear that unless a Governor acts as a “*persona designate*” i.e. “*co-nominee*” under a particular statute or using his discretionary power under the exceptions carved out by the Constitution of India itself, he is bound to act on aid and advice of the Council of Ministers.

2. **Legislative Powers**:-Article 174(1) of the Constitution states that the power to summon both the Houses of the State or any of the Houses of the State lies with the Governor of that State. The Houses are summoned to meet at such time and place as the Governor thinks fit but there should not be lapse of six months between the last sitting in one session and the first in next session. The Governor has power to prorogue the House or either House under Article 174(2) (a) and further the Legislative Assembly of a State. Article 175 of the Constitution provides him the power to address the State Legislature and also no Bill can become law without his assent. Article 200 states that he has the right to reserve certain Bills for the assent of the President. He also nominates 1/6 of the members to the Legislative Council under Article 171.
3. **Ordinance Making Power (Article 213)**:-Ordinance making power, provided under Article 213, is the most important power of the Governor and is similar to that of the President. Ordinance is a way to legislate immediate actions when the Governor is satisfied that it is required due the circumstances existing in the State and the Legislature is not in session. But, such Ordinance cannot be issued by him without previous instructions from the President in the following cases:-
  - Where previous sanction of the President is required for a Bill or,
  - Where such Bill is required to be reserved for his assent under the Constitution.

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<sup>3</sup> *Shamsher Singh vs. State of Punjab*, AIR 1974 SC 2193

Every such ordinance must be laid before both the Houses of Legislature of a State and ceases to operate when six weeks are expired after the re-assembly of the State Legislature or even earlier than such period if any resolution is passed by the Legislative Assembly disapproving that ordinance. The Ordinance issued by the Governor has the same validity as an Act of Legislature and it can be withdrawn by him at any time before the six weeks is expired.

The Supreme Court, in case of *D.C. Wadhwa vs. State of Bihar*<sup>4</sup>, held that the Ordinance making power cannot be used as a substitute for law making power of the Legislature of a State and it can be promulgated in very rare cases where it is necessary in public interest.

4. **Financial Powers**:-The Annual Financial Statement or the budget should be laid before the House of the Houses of State Legislature by the Governor by complying with the provisions of Article 202. Only on the recommendation of the Governor, a Money Bill cannot be introduced or moved in the Legislative Assembly. The demand for a grant can only be made on the recommendation of the Governor.
5. **Pardoning Power**:-This power is granted under Article 161, which is analogous to Article 72 relating to mercy jurisdiction of the President, which is to be exercised by the Governor on the advice of Council of Ministers and remission or suspension or commutation can be granted for any offence in any matter against any law, to which the administrative power of the State extends.

The Supreme Court, in *K.M. Nanavati vs. State of Bombay*<sup>5</sup>, held that indeed during the pendency of a case in the Supreme Court or any time, the Governor has power to grant a full amnesty but he cannot so exercise his power of suspension for the period when the court is seized of the case. It was held that similar power of suspension of Governor is subject to the rules framed by the Supreme Court.

In the case of *A.G. Perarivalan vs. State of Tamil Nadu through supervisor of Police and Ors*<sup>6</sup> the Supreme Court, while releasing A.G. Perarivalan, who was one of the cons in assassination case of Rajiv Gandhi, held that Governor is bound by the advice of the State Cabinet in matters relating to rulings under Article 161. Further, it was reiterated that the orders passed by Governor are amenable to scrutiny of the indigenous Courts and non- exercise of powers of Article 161 has no impunity from judicial scrutiny.

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<sup>4</sup> *D.C. Wadhwa vs. State of Bihar*, AIR 1987 SC 579

<sup>5</sup> *K.M. Nanavati vs. State of Bombay*, AIR 1961 SC 112

<sup>6</sup> *A.G. Perarivalan vs. State of Tamil Nadu through supervisor of Police and Ors*, AIR 2022 SC 2608

## **DISCRETIONARY FUNCTION OF THE GOVERNOR**

There are certain areas expressly recognised under Composition 163 where Governor has to act without aid and advice of the Council of Ministers. There are two types of situations and they're as follows:-

- a. The areas where it is inferred by the nature of Administrative republic and the Constitution.
- b. The areas where special responsibility is expressly assessed on him by the Constitution.

**Implied by the Constitution:-** They are as follows-

- His discretion to choose Chief Minister.
- To ask the Government to prove its strength in the Assembly.
- While dismissing a Chief Minister.
- In dissolving the Legislative Assembly under Article 174(2) (b).
- Using Article 356 to recommend President's Rule.
- He uses his discretionary power in reserving Bill under Article 200 for President's consideration.
- When he returns a bill for reconsideration under Article 200 of the Constitution.

Such discretion must be used by him in a fair and non-partisan manner and to protect and preserve the Constitution as well its ideals and institutions. It is expected that such power should be used in a prudent and responsible manner to protect the Constitution and the legacy or responsible government and not to destroy the same.

**Expressly Conferred by the Constitution:-**The various specific Articles which confer this powers as special responsibility are as follows-

- Article 371(2) provides a special responsibility to the Governor of Maharashtra and Gujarat for establishing development board for Vidarbha, Marathwada, Saurashtra and Kutch etc.
- Article 371A deals with special responsibility of the Governor of Nagaland with respect to law and order as long as there is internal disturbances in some part of that State. Along with this, there is also a responsibility to establish a regional council for the district of Tuensang. The Governor also has the discretionary power in arranging equitable allocation of money between Tuensang district and the rest of Nagaland.

- Article 371F (g) of the Constitution deals with the responsibility of Governor of Sikkim to use his discretionary power for maintaining peace and for an equitable arrangement to ensure the advancement of different sections of the State's population.

In all the above cases, the Governor is not bound to seek advice or act as per the advice of his Council of Ministers.

### **COOPERATIVE FEDERALISM AND ROLE OF GOVERNOR**

In 1988, the Sarkaria Commission reported that the Governor is the 'linchpin of the constitutional apparatus of the state'. His role is observed as one of the key issues in Center-State relations. The Supreme Court of India recommended three approaches to be followed in order to keep the governor functioning constitutionally. They are:-

1. Appointment of the Governor
2. His security of tenure
3. Prohibiting government offered inducements which might prejudice the behaviour of governor in favour of the Central government.

The concept of Cooperative federalism deals with the relationship between the union and state governments in relation to legislation, administration and finance. On the basis of 7<sup>th</sup> Schedule of Indian Constitution, the scope of work and powers of union and state governments are decided. Such division of powers ensures stable and effective governance within the country. To maintain this centre-state relations, the appointment of governors are done and due to this, the governor is termed as the bridge between the Centre and the State.

Governor is the executive authority of a State, who exercise it directly or through the officers subordinate to him. Article 153 of the Constitution of India states that there shall be a Governor for each State. The same person may be appointed as Governor of two or more States.<sup>7</sup> They are appointed by the President of India as per Article 155 with a prescribed term of office as 5 years according to Article 156, but he holds office at the pleasure of President.

In *B.P. Singhal vs. Union of India*<sup>8</sup>, the Supreme Court imposed fetters on the power of President to appoint Governor during his pleasure and said that this power cannot be exercised in an arbitrary or unreasonable manner. The power must be exercised rarely and for compelling reasons which depends on fact and circumstances of a case. The removal of governor cannot be on the ground that he does not subscribe to the ideology of the ruling party in power at the

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<sup>7</sup> Added by 7<sup>th</sup> Amendment Act, 1956

<sup>8</sup> *B.P. Singhal vs. Union of India*, (2010) 6 SCC 331

Centre and hence, change of government at the centre is no ground of removal of governor. The court said that they can interfere and review on two grounds which are, if such removal was arbitrary, mala fide or whimsical, or if the government does not disclose the reason on being called upon by the court to disclose the same or if the reasons are irrelevant, arbitrary or whimsical.

The Supreme Court, in *S.R. Bommai vs. Union of India*<sup>9</sup>, discussed the issue of the misuse of Article 356 of the Indian Constitution. The case established guidelines for the exercise of President's Rule in a State. It was a significant judgment for protecting the federal structure of governance in India.

### **ISSUES IN IMPLEMENTATION OF COOPERATIVE FEDERALISM**

There are several issues such as lack of trust and shrinkage of divisible pools which ultimately plague Centre-State relations which make total cooperation difficult together. When seen from one side, it is observed that the Centre has increased the State's share of divisible pool but the reality is totally opposite. States are getting quite lesser share which is clear when we look into 16<sup>th</sup> Finance Commission recommendations because it states that some Southern States are on the losing side of their share of tax resources. There is requirement of cooperation from all quarters in relation to inter-state water disputes such as issue of *Mahadayi* between Goa and Karnataka and that of *Mahanadi* between Odisha and Chhattisgarh.

### **INSTANCES WHERE COOPERATIVE FEDERALISM SHIFTED TO COMBATIVE**

Indian federalism is facing one of the major changes as there is shift of the same from cooperative to combative due to the reason that the present government assumed power at the Centre with a brute majority.

The former Chief Minister of Uttarakhand used the term 'combative federalism' for the first time immediately after his government was dismissed under Article 356 of the Constitution by President's proclamation.

There are examples of Goa, Karnataka and Maharashtra where the Governor was acting beyond his constitutional power by inviting parties which do not have adequate majority to form the government. Further, the Governor of Rajasthan refused to summon a session as per the desire of the Council of Ministers, which again brought forward the Centre's interference in State's affair.

A question arose that who should have control of the National Capital Territory. The Constitution Bench of the Supreme Court answered the same in case of *Government of NCT*

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<sup>9</sup> *S.R. Bommai vs. Union of India*, AIR 1994 SC 1918



*Delhi vs. Union of India*<sup>10</sup>, and held that even if the government had to inform their decision to the lieutenant governor of Delhi as per Article 239AA, there lies no independent decision making powers with him and had to follow the advice of his Council of Ministers on the matters where the Delhi Legislative Assembly could legislate except in matters of police, public order and land because President is the final authority in these matters and his decision is binding. However, in case of *Ajit Mohan vs. Legislative Assembly, NCT Delhi and Ors*<sup>11</sup>, the Supreme Court had reminded the Delhi Government and the Centre that the State Government and the Central Government have to walk hand in hand or at least walk side by side for a better governance.

### **CONCLUSION**

Collaborative Federalism is need of the hour to overcome the ongoing tussles between the Centre and a State. This federalism involves a perspective of negotiation and coordination so that it is ensured that the government is working within the circumference of the Constitution and in harmony. There is requirement of regular interaction between the Union and State governments for its proper implementation.

Thus, in order for the governments to work efficiently, the concept of collaborative federalism must be adhered to.

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<sup>10</sup> *Government of NCT Delhi vs. Union of India* (2018) 8 SCC 501

<sup>11</sup> *Ajit Mohan vs. Legislative Assembly, NCT Delhi and Ors* AIR 2021 SC 3346