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Polity

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Scope of Discretionary Power of Governor

Governor as a part of state legislature

Indian constitution establish the office of governor as an integral part of state legislature, where governor is authorised to summon and prorogue the session and to dissolve the assembly when no political party is in opposition to ~~supercede~~ secure majority at the state level. There are several instances where governor has not accepted the advice standard by state government to summons or prorogue the session. In all these cases the provision of article 163 have superseded article 174. Supreme Court in Arunachal Pradesh Assembly case 2016 (Nemab Rabia Case) held that the framers of the constitution expressly and consequently left out the power to summons and dissolve the assembly from the ambit of Governor. Court observes that Governor is a nominee of President and such a nominee can not have overriding powers over the representatives of the people. Subsequently governor is not entitled to

(2) Summon and determine the agenda of an assembly session on its own discretion.

To invite a political party and to appoint any person as Chief Minister.

In Indian constitutional framework there is no criteria for selection is provided when, No political party able to prove the majority and different political parties are raising their claim to form the Government. In most of the cases this practice is guided by Convention and precedence.

Supreme Court in several of its adjudication try to clarify the legal position of governor in the situation of a political deadlock. Earlier in Purnachand Ghosh Case 1969 court held that the Governor has a sole discretion while appointing chief minister however His stand had been changed by court of law in several of its other adjudication

In Ramishwar Prasad Case 2006, SC very comprehensively clarify the legal position of Governor saying that the action and decisions of Governor should not be based on any anticipation suspension and perceptions as a constitution entity it is required for the Governor to initiate the process and invite respective political parties, based on the values of popular and representative Democracy. It means it is required for the Governor to invite a particular party or coalition of party

which are in a position to secure majority in the house. ③

In matter of President Rule

Article 356 provides that based on the report of Governor or otherwise criteria president of India can proclaim president rule at the state level with the purpose to dismiss the state government and then after dissolve the state assembly.

The Constitution does not clarify that based on which criteria, circumstances, examination, possibilities, evidences, investigations and document the report is duly prepared by governor. It means the scope of discretion is much more wider in the matter of report preparation and giving recommendation to president of India.

There are several instances where governor on its own discretion dismiss the state government and thereafter advise for president rule.

Supreme court in state of UTTAR pradesh case 1998 curtail down the use of discretionary power enjoyed by the office of Governor saying that Governor is not entitled to dismiss a elected majoritarian government such action of

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Governors are unconstitutional are regarded as a fraud on constitution. It is required for the Governor to follow the values of parliamentary and representative democracy based on the principle of electoral mandate and popular choice.

*EPURU SUDHAKAR Case 2006

4. In Matters of Pardon or Pardoning Power.

Article 72 and 162 does not specify any procedure to be followed in the application to grant or not to grant pardon. The manner in which the power is to be exercised is also not clarified by the constitution. Supreme court in Marwari case 1980 held that president and Governor cannot exercise this power without seeking advice from respective government.

Similarly high court of Madras in 1991 also struck down the order of governor where governor on his own's discretion reject the advice tender by government of Tamilnadu.

In Epuru Sudhakar Case 2006, court by legally clarifying the legal position of discretion and use of pardon held that executive Clemency is a

matter of privilege but also the part of constitutional scheme subsequently some standard or norms could be applied over the exercise of executive clemency. In the same case court also held that it is not always required for the Governor to act mechanically on the advice tendered by respective government. Here Supreme Court upto a certain extent widened the scope of discretionary power.

It is a well established notion that Supreme Court in several of its adjudication restricted the scope of discretionary power. Basically the areas where the persuasive power of governor can transform into dictatorial form, the scope of discretion was curtailed while in circumstances where Governor is in opposition to uphold the values and aspirations of constitution as a preserver, protector and defender of the constitution, the scope is widened by the court.

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Issues and Considerations

In Indian constitutional frame work and parliamentary system an appointee called as governor enjoys more power than an electee that is president of India. It was a deliberated attempt on the part of constitution and makers of constitution to widen the scope of discretion in favour of governor. The basic objective was that governor on behalf of Government of India would control and supervise the legislative and administrative functions of state government although providing more discretionary power to an appointee is also limiting down the values of Parliamentary system since the governor does not enjoy the same security of tenure provided to the office of President.

One constitutional question also arise with regard to the legal sanctity of this office that how an appointee not having the security of tenure can protect preserve and defend the constitution since the constitution does not provide required independence to this office.

One more criticism of this office is that, the governor basically act as an agent of centre it is a sympathetic office to government in power and regarded as an extension of union executive.

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the politicisation of his office has also degraded the functioning of governor as a preserver, protector and defender of the constitution.

Supreme Court as Custodian of constitution has restricted the scope of its discretion but some common minimum parameters are also required to provide security of tenure and independence to this office.

Vice President of India

The constitutional framework of Indian Polity regulates the status position and jurisdiction of every Constitutional authority including the office of Vice President. Vice President is an executive authority performing a legislative function under the patronage of Article 64 which pronounces that Vice President shall act as an ex-officio chairman of Rajya-Sabha basically the office of Vice President is a political stand by providing fulfilling the vacuum created after the death, resignation, removal or absence of President of India.

The constitutional position of Vice President is different from Authorities in the sense that the office has been created for a different purpose and the office

⑧ doesn't enjoy the same security and protection enjoyed by other constitutional Authority.