

12.12.20

→

4) According to Indian Constitutional framework based on the principle of Representative Democracy when a majoritarian govt. provides any advice to Pres. of India then it is required for the President to follow the advice. However, if the same type of advice is provided by a Govt. in minority to dissolve Lok Sabha with a purpose to restrict opposition from forming the Govt., then it is a discretion on the part of President to accept or reject such advice.

Pres.
↓
President

5) The Constitutional mandate of Indian Polity also provides that when a caretaker Govt. provide any advice to Pres. of India then it is against the discretion of President to accept or reject the advice.

↳ Under Art 74(1), President is also authorised to send the concerned advice for reconsideration. It means that President is not immediately accepting the advice but suspending the approval with regard to the advice. This power to send the advice for reconsideration is also discretionary. However, after reconsideration if Govt. tender the same advice or provide advice with modification then it is required for President of India to accept the concerned advice.

Governor of the State

The Constitutional framework of Indian Polity provides special position to the office of Governor between Art 153 & Art 167.

The values, principles & features of Parliamentary Democracy which are acknowledged at the Union level are also operationalised at the State level. It means the Constitutional position of Governor show some resemblance with the office of President in several legislative & administrative matters.

According to Dr. Ambedkar, the Constitutional mandate of Indian Polity does not provide any function to discharge but the office of Governor has certain duties to perform.

The duties of Governor can be classified into 2 broad categories.

- 1) He has to maintain or retain the ministry since the ministry is holding the office during the pleasure of

Governor.

- ii) He can advise, warn or provide any suggestion to the State Govt. so that the ministry should work in accordance with the constitution.

Constitutional Position of Governor

Art 154, 163 & 167, clarifies the legal position of Governor as a chief executive of State & integral part of State Legislature.

Art 154, in this regard provides that all the executive powers of the State shall be incorporated in the office of Governor. & Governor can use this power either directly or through its subordinates. The nature & implication of Art 154, can be illustrated by taking the reference of Art 163(1) & Art 163(2). Art 163(1) pronounced

that it is required for the Governor to follow the advice given by Council of Ministers headed by the Chief Minister, except in so far as he/she is by or under this Constitution required to act on its own discretion.

It should be noted that the expression "required" signifies that the Governor can exercise his discretionary power under any expressed provision of the Constitution or under any necessary implications.

In this regard Art 167(1) also provides that it is a duty of the Chief Minister to furnish information with regard to any decision taken by State Govt. in any proposal of legislation & administration. This particular power of Governor under Art 167, to accept decisions seems to be persuasive but whether it could transform into a dictatorial power or not, is a debatable issue. However, under the mandate of Indian

Constitution, the scope of discretionary power enjoyed by the office of Governor seems to be much more wider than President of India.

Scope of Discretionary Power

2006

↓

Rameshwar
Prasad
case