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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 In all these cases the provision of article 163 have superseded article 174.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 cannot 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 Purifchand Ghosh Case 1969 court held that the Governor has a sole discretion while appointing chief minister however this stand had been changed by court of law in several of its other adjudication.

In Ramshwar 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 161 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 Marumam 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 constitution-  
al scheme. Subsequently some standard or norms  
could be applied over the exercised 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 transf-  
-orm 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 function 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 this 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 regulate 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 pronounce 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.