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GOVERNOR OF A STATE IN INDIA - HOT SEAT WITH PERIOD OF UNCERTAINTY

By

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The debate of the Indian Nation at present among other issues has been revolving around as to whether Governors of the States have necessarily to give up their offices or not with every change of Government at the Centre in keeping with the reign of a new political party to the power, notwithstanding the assured period of five years of term.

There is no security for term of office for Governor under the Indian Constitution. Our Indian Constitution though provides that the tenure of the office of Governors as five years, it does not guarantee the fulfillment of the said full term. It is worth to note that while, Article 156(3) of the Indian Constitution states that a Governor shall hold for a term of five years from the date on which he enters upon his office, the Article 156(1) of the Indian Constitution states that the Governor shall hold office during the pleasure of the President. Thus, a Governor can complete the assured five years term of office on his satisfying the pre-condition of the pleasure of the President only. What

constitutes pleasure of the President remains a question. It has been observed in the political history of our Nation that President has exercised his powers in seeking removal or changing of the Governors not at his own decisive approach for allegations of any corruption, bribery, violation of the Constitution etc. but basing on the advices and interventions of Prime Minister and his council of ministers who represent the political party that has gained power in the centre. Under our Indian Constitution, the President is bound to act on the aid and advice of the Council of Ministers under Article 74, and it has to been seen from the past examples, that on reality it is the Central Government that appoints and removes the Governors. The word “Pleasure of the President” in the context of removal of Governors as envisaged under Article 156(1) of our Indian Constitution has to be inferred as will and desire of the Central Government. The trend of our Nation has been that Governor occupies a political post and is widely recognized as selected by the incumbent Central Government. The history

of our Nation indicates that Governors have always been subjected for removal or changed as and when there arose situations of change of political party in power in the Central Government (*i.e.*) Governors appointed by previous Government are removed by incoming Government, more based on political reasons.

The saga of removing Governors with the change of Central Government can be traced back to 1977, when the Janata Party sacked all Congress appointed Governors, mostly appointed during the Smt. *Indira Gandhi's* regime. The Justice Sarkaria Commission of the year 1988 recommended that Governors are posts with dignity and that they cannot be removed before completion of their five year tenure except in rare and compelling circumstances. The said Justice Sarkaria Commission further stated that Governors can carryout their duties without fear or favour on their tenure being secured and that the procedure of removal must allow the Governors an opportunity to explain and the Central Government must consider their explanation before ordering for removal. The Central Government did not adhere to the recommendations of the Justice Sarkaria Commission and in the year 1989, the National Front Government headed by the Prime Minister Sri. *V.P. Singh* removed the Governors appointed by the Congress Government calling the removal as being necessitated to remove corruption. The pattern of removal Governors further led to constitution of Justice Venkatachalaiah Commission in the year 2002. The highlight aspect of the Justice Venkatachalaiah Commission was that it recommended that Governors should be allowed to complete their five years time and in the event there arises any necessity to remove them before completion of their term, the Central Government should do so only after consultation with the Chief Minister. It is worth to note that ignoring the background

of the existing recommendations of the Justice Sarkaria Commission and the Justice Venkatachalaiah Commission, the newly elected Central Government after the 14th Lok Sabha elections, removed the Governors of Uttar Pradesh, Gujarat, Haryana and Goa in July 2004. In the year 2004, all the NDA appointed Governors were removed when the UPA Government came to power at the Centre. The said removals of the year 2004 were challenged and a landmark judgment (*B.P. Singhal v. Union of India*) emanated in the year 2010 wherein a constitutional Bench of the Hon'ble Supreme Court interpreting the scope of the Doctrine of Pleasure, and the other relevant provisions laid certain principles which are to be borne in removal of the Governors of the States. It was made clear in the said epic judgment of *B.P. Singhal v. Union of India*, that power to remove Governors may be exercised by the President but the said powers are not unfettered and should not be exercised in arbitrary, capricious and on unreasonable grounds. The said judgment of *B.P. Singhal v. Union of India* opined that removing of Governors should be an exercise in rare and exceptional circumstances and that a change in Central Government cannot be a ground for removal of the Governors or to appoint more favourable persons as Governors by removal of Governors who are at variance with the policies and decisions of the Central Government. This judgment of the year 2010 of the Hon'ble Supreme Court to the best of my knowledge, created for the first time a legal remedy by stating therein that a decision of removal of a Governor can be challenged in a court of law and further made it clear that doctrine of pleasure is not a licence to act with wide discretion to act arbitrarily. In the backdrop of the said judgment in *B.P. Singhal v. Union of India*, and the earlier existing Commissions, the Central Government appointed another Commission. Thus, another commission in the year 2010 headed by Justice *Punchhi* was originated. The Justice Punchhi Commission

came with the suggestion that the phrase “during the pleasure of the President” should be removed from the Constitution of India as it felt that Governor should not be removed at the will of the Central Government.

The situation of removal of the Governors as and when new political parties comes to power is still continuing. The new Central Government of 2014 relating to BJP political party sacking Pudicherry Lt. Governor *Virendra Khataria* belonging to Congress party, leading circumstances for resignation of Chattisgarh Governor Sri. *Shekar Dutt* and Uttar Pradesh Governor Sri. *B.L. Joshi* appears to be the removals based on political lines.

Our Indian Constitution does not envisage that Governors are to be removed or changed as and when new political party comes to power in central Government. To add, our Indian Constitution is silent and does not explain as to what constitutes the words “Pleasure of the President”. There is every necessity for security of the term of office of five years as stipulated under Article 156(3) of the Indian Constitution.

Sometimes it makes me feel that in cases of removal of Governors as to whether the President is having really a final say or is it that he is just following or relying on the aid and advise of the Central Government constituting of Prime Minister and his Council of Ministers. There requires an another debate as to when the President declines to adopt or implement the aid and advise of the Central Government in removal of Governors what would be the situation then?

The recommendations of the Justice Sarkaria Commission (1988), Justice Venkatachalaiah Commission (2002) and Justice Punchhi Commission (2010) remained as academic adventures and records of legal jurists. The recommendations have not been given the form of laws by Parliament to this day. The recommendations remain as not binding on the Central Government.

It is suggested that the phrase “Pleasure of the President” deserves to be modified with more explanations, since the said expression is vague and not explained in specific narrating the ambit of it in our Indian Constitution. The fact that the President has the powers to remove the Governors without assigning any reasons requires to be deleted as the said powers appears to be unfettered and that President may act at his whims and fancies much against the established principles of natural justice and in this regard suitable amendments in Constitution of India is desired. There is every necessity to lay down in the Constitution of India by suitable amendments that Governor being a part of vital organ of Executive and being a constitutional functionary, enjoying a post with respect with dignity and the said appointment being made by the President, in the manner of appointments of the Judges of Supreme Court, Judges of High Court, the act of removal of Governors should also follow the procedures as is adopted in the cases of Judges of High Court, Supreme Court *etc.* The Constitution of India should incorporate with amendments that Governors can be removed only by process of impeachment during their term of office with clear deletion that the President has no exclusive powers to remove Governor at the aid and advise of the Prime Minister and his council of Ministers. It is also suggested that appointments to the post of Governors should be made of individuals of repute not related to any political party with an assured fixed term of office to avoid the ongoing controversy that Governors are being removed as and when new Central Governments with new political origin come to power, taking the view that a Governor belongs to a political party of an outgoing Central Government. There is also a suggestion at the last as to why there should not be an elected Governor with a combination of electorate of both Centre and States as is adopted in the case of President of India.

The office of Governor enjoys many powers under the Indian Constitution, hope the procedures in their appointments and removals carry more transparency and effectiveness enhancing their values by suitable amendments in the Constitution of India.

THE GAP BETWEEN THE EXPECTATIONS OF THE GENERAL PUBLIC AND THE REMEDIES PROVIDED UNDER LAW - A BRIEF STUDY OF ACCIDENTAL DEATHS

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India is an accident prone country. The road safety in India is at cross roads. Now-a-days there were many fatal road accidents resulting in the death of human beings on the spot. When any such accidents occur the Law that comes into play is usually a criminal case under Section 304-A IPC against the erring driver and the Law of Insurance that cover the life of the deceased persons during the accidents and most important is the claim to the dependents of the deceased family members. If the rashness or negligence is proved against the erring driver he would be sentenced as provided under Section 304A of IPC¹.

For the first time in *Kesavan Nair v. State Insurance Officer Justice Krishna Iyer*, as he then was, observed in Paragraph 4 of his order as follows : It is not altogether irrelevant to observe that motor vehicle **accidents** in the State are increasing at an alarming rate but that there is hardly any serious check by the concerned authorities to ensure careful driving. The innocent victim is faced with legal difficulties in recovering damages².

The other aspect is victim compensation, damages *etc.*, that would be granted after

necessary adjudication under the relevant provisions of Insurance Laws, Motor Vehicles Act and other Civil Laws. When there was no Insurance coverage to the accident vehicle the insurance companies decline to grant the amount by way of damages under tortious liability. The remedy of damages is usually granted against the person responsible for the death (Accident) and also against the owner of the motor vehicle concerned when there is no third party Insurance³.

When the general law is as stated above there were certain instances where the public were resorting to certain activities taking law into their hands.

The Supreme Court has pointed out that the road accidents had become one of the top killers in the country. It was pointed out that most of these accidents would be due to reckless driving which persuaded the Courts to draw an initial presumption in several cases based on the doctrine of *res ipsa loquitur*. Supreme Court cautioned the Accident Claims Tribunal to take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt or some obscurity⁴.

1. Justice P.S. Narayana and Manohar Gogia's Criminal Major Acts 9th Edition 2010 ALT Publication P.309

2. 1971 ACJ 219 (Kerala)

3. Insurance Law

4. N.K.V. Bros. (P) Ltd. v. M. Kanimai Ammal, 1980 ACJ 435 (SC)