INSTITUTION OF GOVERNOR'S - A CONSTITUTIONAL PROSPECTIVE

By

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THE STATE EXECUTIVE : appointed under Articles 153, 167 and Article 213 the Governor.

Appointment of a Governor: The Governor of State is appointed by the President of India under Article 155. Neither elected by the direct vote of the People nor indirect vote by 9 specially electoral colleges in the case with the President. He is the nominee of the Central Government.

In *Harigound v. Raghukul*, it has been held that the office of the Governor of a State is not an employment under the Government of India and it does not come with to the Prohibition of clause (d) of Article 319, and therefore, a member of the State Public Service Commission can be appointed by the Governor. The office of the Governor is an independent office and is not under the control or Subordinate to the Government of India.

According to Article 157 a person to be eligible to be appointed as Governor must be (a) citizen of India, and (b) must have completed the age of 35 years. The Governor must not be a member of either House of Parliament or of a House of the Legislature of any State. If a member of either Parliament or of a House of the Legislature of any such State is appointed as a Governor he shall be deemed to have vacated his seat in the House on the date on which he enters upon his office as Governor. He shall not hold any other office of profit (Article 158). The Governor is entitled to such employments' allowances and privilege as may be determined by the Parliament by law. The salary of the Governor at present fixed at Rs.11,000/-. He is also entitled to free use of his official residence. The salary and allowance of the Governor cannot be reduced during this term of offices (Article 158(4). The Governor entering upon his office, is required to take an oath or affirmation to the presence of the Chief Justice of the High Court or if he is not present, in the presence of the senior most Judge of the High Court.

Article 156 of the Constitution says that the Governor shall hold office during the pleasure of the President, subject to this rule, the tenure of the office of the Governor is fixed for five years from the date on which he enters upon his office. He may be removed from office at any time by the President. The President acts on the advice of the cabinet. The Governor may, however resign his office by writing to the President. The five year term provided for the Governor's under clause (3) is subject to exercise of pleasure by President under clause (1) Article 156. Thus it lies within the power of the President to terminate in his direction the term of the office of the Governor at his pleasure. The presidential pleasure is unjustifiable it is not regulated or controlled by the procedure laid down in Article 311. The Governor has no security of tenure and no fixed form of office. He may be removed by an expression of presidential displeasure.

Under Article 160 the President is authorized to make such provision as he thinks fit for the discharge of the functions of the Governor of a State in any contingency not provided. Shortly speaking the powers of the Governor of a State are analogous to those of the President excepting that the Governor has no diplomatic, military or

emergency power. The powers of the Governor can be classified under four heads. Executive, Financial, Legislative and Judicial.

The ordinance making power of the Governor under Article 213 is similar to that of the President under Article 123. The Governor can issue ordinance only when two conditions are fulfilled.

1. The Governor can only issue ordinance when the Legislative Assembly of State is not in session or where, there are two houses is a State both houses are not in session.

2. The Governor must be satisfied that circumstances exit which render it necessary for him to take immediate action. The Court cannot question the validity of the ordinance on the ground that there was no necessity or sufficient ground for issuing the ordinance by the Governor. The existence of such necessity is not a justifiable issue. The exercise of ordinance making power is not discretionary. The Governor exercises this power on the advice of the Cabinet.

3. An ordinance shall have the same force and effect as an Act of the Legislature. It can override the judgment of the High Court under Article 226 of the Constitution of India.

4. Both Central and State Legislature can make Laws on subjects mentioned in the concurrent list. According to Article 213(3) therefore, an ordinance will be invalid to the extent, it makes any provision which would be invalid, if enacted by the State Legislature. But such an ordinance will not be invalid if it has been issued by the Governor in pursuance of instructions from the President.

5. The role of Governors in the appointment of the Chief Minister and the dismissal of a Ministry again assumed a great importance in view of the Government.

6. The Governor cannot issue an ordinance without instruction from the President.

7. The judgment of the Court would go a long way in preventing the Governments "manipulative practice" circumventing the provisions of the Constitution regarding maximum time limit for the continuance of the Ordinances. In general the relation between the Governor and his Ministers is the same as at that between the President and his Ministers, with this important difference that while the Constitution does not empower the President to exercise any functions, or any of them in his discretion.

8. In exercise of his discretionary powers of the Governor is not required to act on the advice of the Ministers or ever to seek such advice. This is made clear from clause (2) of the Article which says that if any question arises whether any matter is or is not a matter as regards which the Governor if required by the Constitution to act in his discretion, the decision of the Governor shall be final and the validity of anything done by the Governor shall not be called into question on the ground that he ought or ought not to have acted in his discretion.

9. The Constitution does not define as to what are the discretionary powers of the Governor. This raises a question whether the Governor, like the President is merely a constitutional head who is to exercise his powers in accordance with the advice of his Ministers responsible to the lower house, whether he has some real powers. It is to be noted that the language of Article 163 is partial reproduction of Section 50(1) of the Governor of India Act, 1935. Indeed the discretionary powers of the Governor seemed alarming to the members of the constituent assembly.

10. The Chief Minister is appointed by the Governor (Article 164). As a matter of well established convention the leader of the majority party in the lower house should be appointed as the Chief Minister. In normal circumstances, no doubt the Governor as to who is the leader of the majority party in the

lower house. But circumstances may arise when it may be doubtful as to who is the proper person *i.e.*, leader of the majority without having such majority. In such circumstances, the Governor may have to exercise his discretion in selecting the Chief Minister. Unfortunately, in exercise of their discretion Governors have not followed any uniform practice in some States, the Governor had invited the leader of the single largest party to form a ministry and ignored the claim of the leader of a United Front (Rajasthan 1967 and Madras in 1951 and recently in Harayana, 1982) Whether it was formed prior to election or after the election on the other hand, in some States the Governors had given preference to the leader of United Front over the leader of the single largest party (in Center in 1979, Punjab in 1967, Bihar in 1968, West Bengal in 1970, Maharashtra in 1978) and also happened in the year of 2005 Jharkhand Sibusoran Government under U.P.A. of Central Government.

11. So the above such instances clearly establishes that the powers of the Governors some of them mis-utilizes the powers.

12. The main reason to happen this kind of thins, more are the Governors coming from political parties. So such political party candidates may not encourage, and better to give an opportunity to retired I.P.S., I.A.S., High Court Judges, *etc.*

CYBER-LAWS

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THE INFORMATION TECHNOLOGY ACT, 2000

Digital Technology and New Communication Systems have made dramatic changes in our lives. Business transactions are being made with the help of computers. Business community as well as individuals are increasingly using computers to create, transmit and store information in the electronic form instead of traditional paper documents. Information stored in electronic form of is cheaper. It is easier to store, retrieve and speedier to communicate people are aware of these advantages but they are reluctant to conduct business or conclude transactions in the electronic form due to lack of legal frame work. At present many legal provisions recognize paper based records and documents which should bear signatures. Since electronic commerce eliminates the need paper based transactions, therefore to facilitate electronic commerce, there is a need for legal changes.

The United Nations Commission on International Trade Law adopted the Model Law in Electronic Commerce in 1996. India being signatory to it has to revise its laws as per the said Model Law. Keeping in view the urgent need to bring suitable amendments is the existing laws to facilitate electronic commerce and with a view to facilitate Electronic Governance, the Information and Technology Bill, 1999, was introduced in the Parliament.

New communication systems and digital technology have made dramatic changes in the way we live. A revolution is occurring in the way people transact business. Businesses and consumers are increasingly using computers to create, transmit and store information in the electronic form instead of traditional paper documents. Information stored in electronic form has many advantages. It is cheaper, easier to store, retrieve and speedier to communicate. Although people