



Discretionary Power of the Governor in Indian States: A Constitutional Analysis

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Abstract

The Governor of an Indian state holds a unique constitutional position as the head of the state, acting as a bridge between the Union and the State governments. While the Governor is primarily expected to act on the advice of the Council of Ministers, the Indian Constitution grants certain discretionary powers that allow independent decision-making in specific situations. These powers, often a subject of political and legal debates, shape the balance of power between the state and the Union. This paper examines the discretionary powers of the Governor, their constitutional basis, judicial interpretations, and their impact on Indian federalism.

I. Introduction

The Governor, appointed by the President under Article 155 of the Indian Constitution, serves as the constitutional head of a state. Unlike the President, the Governor is not an elected representative but a nominee of the central government. This appointment mechanism has often raised concerns about the discretionary authority exercised by the Governor, especially in times of political instability. This paper explores the discretionary powers conferred upon the Governor and their implications for state governance and federalism.

Constitutional Provisions of Discretionary Powers: The discretionary powers of the Governor primarily stem from Articles 163 and 164 of the Indian Constitution.

1. Article 163: Discretionary Powers of the Governor

Article 163(1) states:

“There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required

to exercise his functions at his discretion.”

This provision indicates that the Governor may act independently in specific situations where the Constitution explicitly grants discretionary powers. However, the scope of discretion remains a subject of interpretation.

2. Article 164: Appointment of the Chief Minister:

Under Article 164(1), the Governor appoints the Chief Minister and other ministers. In cases where no party has a clear majority in the legislative assembly, the Governor exercises discretion in selecting the Chief Minister.

Key Areas of Discretionary Power

1. Appointment of the Chief Minister:

When no party secures a majority in the legislative assembly, the Governor has the discretion to invite the leader of the largest party or coalition to form the government. This power has often led to political controversies, as seen in cases like Karnataka (2018) and Maharashtra (2019).

2. Dismissal of a Government:

The Governor can recommend the dismissal of a state government if it loses the confidence of the assembly. This was a contentious issue in the 1970s and 1980s, leading to the Supreme Court's ruling in *S.R. Bommai v. Union of India* (1994), which restricted arbitrary dismissals.

3. Dissolution of the Legislative Assembly:

In situations of political instability, the Governor can dissolve the legislative assembly, either on the advice of the Chief Minister or at their own discretion if no stable government is possible.

4. Recommendation of President's Rule (Article 356):

If the Governor reports to the President that the governance of a state cannot be carried out according to the Constitution, the President can impose President's Rule. This power has been frequently used, but the Supreme Court, in *S.R.*



Bomma v. Union of India, established judicial review over such decisions.

5. Reserving a Bill for the President's Consideration (Article 200):

The Governor has the discretion to withhold assent to a bill and refer it to the President for consideration. This power has been criticized for delaying the implementation of state laws.

Judicial Interpretation and Landmark Cases

1. S.R. Bomma v. Union of India (1994): The Supreme Court ruled that the discretionary power of the Governor under Article 356 is subject to judicial review, preventing arbitrary dismissal of state governments.

2. Rameshwar Prasad v. Union of India (2006): The Supreme Court held that the Governor's recommendation for dissolution of the assembly must be based on objective material.

3. Shamsher Singh v. State of Punjab (1974): The Supreme Court emphasized that the Governor is bound by the advice of the Council of Ministers except in discretionary matters.

Criticism of the Governor's Discretionary Powers

1. Political Bias: Since Governors are appointed by the central government, their discretionary powers are often accused of favoring the ruling party at the center.

2. Lack of Accountability: Unlike elected representatives, Governors are not directly accountable to the people, leading to concerns about transparency in decision-making.

3. Interference in State Autonomy: Excessive use of discretionary power under mines the federal structure of the Constitution.

Conclusion and Recommendations:

The discretionary powers of the Governor, while constitutionally mandated, must be exercised with caution and fairness. Judicial scrutiny and constitutional morality should guide their application to prevent misuse. Reforms such as fixed tenure for Governors, greater transparency in decision-making, and stricter judicial oversight can help balance the role of the Governor within India's federal structure.

References:

- [1]. Constitution of India
 - [2]. S.R. Bomma v. Union of India (1994)
 - [3]. Rameshwar Prasad v. Union of India (2006)
- Shamsher Singh v. State of Punjab (1974)