

GUVERNATORIAL DISCRETION- A MYTH?

INTRODUCTION-

Governor- a position of great power and responsibility is often seen as a link between centre and states. A rubber stamp appointment for many, he holds different sets of powers- discretionary powers being one of them. This article is an attempt to understand these powers through various laws and judgments, their use and misuse on occasions and finally how these laws can be made more accountable.

Firstly, let us understand the meaning of the phrase “discretion”, as per the Oxford Concise English Dictionary refers to taking a particular plan of work without any embarrassment¹. As per the Law Laxicon it means it means a choice to act or refrain from doing so in any situation following a set of legal guidelines².

Thus discretionary powers have been referred to as largely independent powers that have been allotted to individuals but under certain existing pre conditions. This was emphasized in *Ganamani vs Governor of Andhra* AIR 1954 A.P. 9³- The court set up a standard to define a governor’s discretionary powers by setting up the following guideline- all powers that are to be exercised by the governor on advice of the council of ministers is not discretionary while the rest of his actions which are independent can happen on accord of his own discretion.

¹ THE CONCISE OXFORD DICTIONARY of Current English, Eighth Edition, 333 (R.E. Allen ed.).

² Mukesh Kumar, *Chapter VI- Discretionary powers of the Governor in India*, 168(Department of Law, Punjab University)available at http://shodhganga.inflibnet.ac.in/bitstream/10603/3695/12/12_chapter%206.pdf . (Last visited on April 15, 2016).

³ *Ganamani vs Governor of Andhra* AIR 1954 A.P. 9.

HISTORY OF DEVELOPMENT OF DISCRETIONARY POWERS-

Such discretionary powers have been in existence since pre independence times, for instance Governor under Section 50 of the Government of India Act 1935, was allowed to preside in meetings being held by the Chief Minister. It was in this context of abuse of discretionary powers by the colonial rulers that it was decided that there was a need to limit the governor's powers to make him accountable to the council of ministers of a state under the original constituent assembly debates in the year 1949 to frame the constitution⁴.

Member of the assembly, TT Krishnamachari pointed out that there was a need to either do away or limit considerably such discretionary powers of the governor but such amendments were ultimately not moved thus allowing wide gambit of discretionary power under the Governor's area of operations⁵.

There was also a lot of debate and deliberation on the ambiguity of different sections and terms for instance like under article 164 (1) the vague definition of "holding an office during the pleasure of the governor", where in it was pointed out by BR Ambedkar that as long as the council of ministers enjoyed numerical superiority in the legislative assembly of the state, their position could not be challenged by the governor, however it is to be noted that this article was severely abused post independence⁶.

TYPES OF DISCRETIONARY POWERS-

The Discretionary powers allotted to the governors can be defined in two broad categories ⁷—

1-Specific Discretionary Powers- These articles have specifically allotted such powers to the governors and include- Article 239 of the constitution, Article 371 of the constitution and paragraph nine of the sixth schedule. These are more specifically envisaged and more succinct and concrete.

2- Circumstantial Discretionary Powers- These powers are meant to be wielded in certain limited types of circumstances and have often come under scanner for wrongful use in dubious conditions. Under the 1960 Administrative Reforms Commission to review Centre state relations it was pointed out that there

⁴ "CONSTITUENT ASSEMBLY OF INDIA-Volume VIII" available at <http://parliamentofindia.nic.in/ls/debates/vol8p13a.htm> . (Last visited on April 15, 2016).

⁵ *Id.*, note 4.

⁶ Mainstream Weekly, *Role of Governor and Multiparty System*, Saturday, 1 March, 2008, available at <http://www.mainstreamweekly.net/article553.html> (Last visited on April 15, 2016).

⁷ MUKESH KUMAR, *Supra* note 2, 170-174.

was a need to allot such powers to the governors to uphold the supremacy of constitutional laws and such powers could be used specifically in the following contexts-

- i) Appointment of Chief Minister of states
- ii) Governor's Assent to Bills introduced in state legislatures
- iii) Dissolution of State Assembly
- iv) Dismissal of Ministry
- v) Summon and Prorogue of the State Assembly
- vi) Recommendation of President's Rule
- vii) Pardoning Power against proclaimed offenders and convicts.
- viii) Appointment of the Vice-Chancellor of state government run institutions.

BRIEF OVERVIEW OF IMPORTANT DISCRETIONARY LAWS, POWERS AND JUDGEMENTS

A very important component of such wide ranging powers is the appointment of Chief Ministers, a power to settle or unsettle government machinery at states. There have been instances where such discretionary powers have been misused, as seen in the following instances⁸-

1- In the year 1974 in Odisha it was seen that the governor instead of appointing the largest party under the leadership of Shri Biju Patnaik but on the contrary he ended up inviting Nandini Satpathy of the Congress to form the government which was clearly against rules.

2-In the year 1984 it was seen that the governor of Sikkim had not invited the leader of the majority party to form the government as he had personal differences with him which was clearly against the statutory rules so set.

But, such wrongful actions can be dealt by following a couple of recommendations from the Committee on governors appointed by the President in 1970⁹-

⁸ Mukesh Kumar, *supra* note 2, 254-260.

1-In case of single party or coalition having gained majority they should be invited to form the government.

2- If no party is able to form a majority at the election, two or more parties may come up with a coalition agreement to form a government in such an instance.

3-A minority leader can only be asked to form a government in case the governor feels that he will eventually end up having a majority.

4- There is no obligation on the governor to invite the party with the most number of legislators to form the government in case there is no clear majority but if the governor so feels that the party in question can form the government then he is allowed to invite them

There is complete discretionary power to allot terms to governments at Governor's own "pleasure" that is as per the whims and fancies of the governor under Article 164 (1) of the constitution, this law has had a tendency to be misused to topple stable governments on often flimsy excuses.¹⁰.

But , the governor seems to be immune to any such mistakes, intentional or otherwise that he makes while appointing Chief Ministers as seen in *Mahabir Prasad vs Prafulla Chandra* AIR 1969 Cal 198¹¹- The court pointed out that there was no standard set of rules to be followed in cases of death, resignation or defeat of a previous CM of a state, the Governor using his own discretion could invite any person or party he felt fit to form the government as was guaranteed under article 164 (1) of the constitution. This was also justified in *Pratap Singh Raojirao Rane vs Governor of Goa* AIR 1999 Bom. 53¹²- The court accorded a near immunity status to a governor's actions in this case by citing that he/she is not answerable to the court even in cases their actions are out rightly mala fide though their actions can be stuck down.

Under Article 200, that deals with assent of a governor to any bill introduced in state legislature¹³-

i) He can give his assent to the Bill,

ii) He can withhold his assent,

⁹ Mukesh Kumar, *supra* note 2, 187-188.

¹⁰ Mainstream weekly, *supra* note 6.

¹¹ Mahabir Prasad vs Prafulla Chandra AIR 1969 Cal 198.

¹² Pratap Singh Raojirao Rane vs Governor of Goa AIR 1999 Bom 53 .

¹³ Mukesh Kumar, *supra* note 2, 190.

iii) He can reserve the Bill for the consideration of the President,

iv) He can return the Bill to the House for re-consideration, if it is not a Money Bill, he can with particular emphasis on certain points explain the need for introducing the necessary amendments and changes that the bill so needs according to him.

In *Hoechst Pharmaceuticals v. State of Bihar* (1983 SC 1019)¹⁴ – The court pointed that in case the governor felt that he did not have adequate authority to sanction a bill and opted to ask for the president and thus unnecessarily avoided using his power under article 200(2) if the bill compounds articles 31(3), 254(2) and 304(b), it was still justified.

A Governor's discretionary powers can also be extended to set up development boards and other like organizations in situations he sees so fit, Articles 371 and its parts like 371 A, 371 C , 371 F(g) and H (a) have specifically said that the governor can be given powers to set up boards and deal with administration of specific regions like Maharashtra , Gujarat, Sikkim, Nagaland, Manipur, Arunachal Pradesh etc, but the rule inserted by the Sarkaria commission suggested that in such instances there should be some consultations compulsorily between the governor and the council of ministers to maintain harmony and purpose¹⁵.

RECENT DEVELOPMENTS-

In July 2013, there seemed to be a major addition to this quota when based on an appeal by the ASG (Additional solicitor General) of Chhattisgarh to declare that Schedule V areas did not come within the ambit of such powers the Law ministry issued a circular claiming that the discretionary powers have

¹⁴ *Hoechst Pharmaceuticals v. State of Bihar* 1983 SCR (3) 130.

¹⁵ Mukesh Kumar, *supra* note 2, 172-173.

now been extended to the regions covered under the fifth schedule that is namely those areas under scheduled areas and scheduled tribes respectively¹⁶.

CONCLUSION-

After discussing the various provisions ,case laws, pros and cons, history of usage and other subsequent aspects of discretionary powers of the governor I conclude-

1-Discretionary powers of the governor are not a myth, they exist in abundance though it can be argued that not all of them are carefully delineated and furthermore there has been a lot debate over their need at the first place.

2- These discretionary powers are pretty potent as they deal with formation and management of governmental activities and thus are subject to careful use.

3-There have been instances wherein these powers have been blatantly misused by governors who have chosen to give primacy to their vested interests, in order to deal with such dangers the recommendations of various committees like the Sarkaria committee , the committee on governors appointed by the president etc be implemented with immediate effect.

4-Such discretionary powers are needed for better management of the state governments and thus should not be done away with but there should be more checks to this system especially by allowing judiciary and parts of non political executive to counter misuse with suitable provisions.

¹⁶ indianexpress.com, *Guv has discretionary powers in Schedule V areas: Govt*, July 15, 2013, available at <http://archive.indianexpress.com/news/guv-has-discretionary-powers-in-schedule-v-areas-govt/1141938/> (Last visited on April 15,2016).

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