

THE ROLE OF THE GOVERNOR

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The Governor of Gujarat has appointed a retired High Court Judge as the Lokayukt of the State without consulting the Chief Minister and after consulting the Leader of the Opposition. The Gujarat Government has strongly objected to this act of the Governor, stating that she had acted contrary to the provisions of Article 163 of the Constitution.

The action of the Gujarat Governor is not the solitary example of a Governor acting either contrary to the advice of Council of Ministers or without bothering to take the advice of the Council. Many Governors have resorted to what was done by Giani Zail Singh as President in the case of the Postal Bill, in which he neither gave assent nor returned the Bill for reconsideration. In fact he sat on the Bill till the House was dissolved, thus causing the Bill to lapse. Under Article 111 of the Constitution in the case of the Union and Article 200 in the case of the States if the President or the Governor decides not to give assent to a Bill there is no time limit prescribed within which he must make up his mind in this behalf. Our lawmakers must seriously consider whether the Constitution should be amended to provide for a time limit for the President or Governor to consider a Bill, because in a parliamentary democracy it is the prerogative of the Legislature to enact laws and not the Governor.

Are Governors agents of the Central Government under the Constitution? The scheme of the Constitution as laid down by Article 1 is that India is a Union of States. This vests in every State a degree of sovereignty which is merged in the larger sovereignty of the nation without thereby becoming extinct. Part VI of the Constitution, which relates to the States, creates the post of a Governor for each State, vests the executive power in him and also makes him an integral part of the State Legislature. No doubt the Governor is appointed by the President under Article 155 and holds office at his pleasure under Article 156, but because he is the head of the State vested with the executive powers of the State and is also a part of the Legislature, he is more than an agent of the Central Government and has all the characteristics of a sovereign Head of State. In his functioning the Governor cannot be partisan, he cannot have a political bias and he certainly cannot work at the behest of the Central Government.

The Chief Minister and Council of Ministers are collectively responsible to the Legislative Assembly, not to the Governor. In a way they are accountable to the Governor because under Article 167 the Chief Minister must keep the Governor apprised of the decisions of the Council of Ministers and generally about the administration of the State. The Governor can give advice to the Council of Minister and can otherwise try and guide the Chief Minister. What he cannot do is interfere with the administration in such a way that he functions contrary to the advice given to him by the Chief Minister.

Article 166 is very clear that in all matters except where the Constitution gives discretionary powers the Governor must act according to the advice of his Council of Ministers. It is the legislators who are elected and it is the Council of Ministers which has the mandate of the people to rule. Like the Queen of England the Governor may reign but he may not rule. Trouble begins when a Governor confuses these two roles. He may caution government but he cannot order government. A good Governor would always be able to informally talk the Chief Minister out of an unwise decision, but if a Chief Minister insists on being foolish it is the electorate or the House which would call him to account, not the Governor.

Are there situations in which the Governor can exercise discretionary powers? One such is in a matter of giving sanction for the prosecution of a minister. In the Lokayukt of Madhya Pradesh vs. The State, the Supreme Court ruled that the High Court erred in setting aside the sanction issued by Bhai Mahavir, the Governor, for prosecution of three ministers of government despite the Council of Ministers having advised against it. The Supreme Court ruled that the Council collectively could hardly be expected to take an unbiased view in a case pertaining to their own colleagues and, therefore, the Governor, as appointing authority of ministers, could sanction their prosecution independent of the advice of the Council. In other words, here is an area where the Governor has discretionary powers.

Under Article 159 the Governor swears to preserve, protect and defend the Constitution and the law. If the Council of Ministers renders him advice which is violative of the provisions of the Constitution he will naturally reject it. For example, if the Council advises him to ignore a court order the Governor will not accept this advice. If the Council insists on working in such a way that the constitutional order in the State is disturbed the Governor, independent of the Council, will advise the President suitably under Article 356. In deciding to reserve a Bill for the consideration of the President under Article 200 the Governor will not seek the advice of the Council of Ministers. These are areas where the Governor does have discretionary powers. In all other matters the Governor has no discretionary powers. It is about time that the Central Government made this clear to all Governors instead of encouraging persons like the Governor of Gujarat to act in an unconstitutional manner.

For a person to be appointed as a driver in a government department or a cook in a government guesthouse there are certain requisite qualifications. Under Article 157 the only qualification required of a Governor is that he should be more than thirty-five years old. It is not mandatory for a Governor to be literate. Under Article 158 he should not be a Member of Parliament or State Legislature, nor should he hold an office of profit, but there is nothing to prevent a person employed in a commercial house being appointed as Governor. Is it not time for our lawmakers to consider providing some qualifications for a Governor? Should he not have experience in some field of endeavour which qualifies him to becoming a Head of State? Should he not be a person of proven integrity, who has demonstrated that he is nonpartisan? He occupies the gubernatorial position which is the highest such post in a State. He is not elected and, therefore, does not enjoy the confidence of the people. He is not selected through a process which demonstrates his ability. He is appointed at the whim of the ruling party at the Centre. This is a grave injustice to the post. No wonder most of our Governors are failed politicians, preferably of an age where an early State funeral is a distinct possibility and many of their actions come straight out of the script of black comedy. How can they possibly “preserve, protect and defend the Constitution”?
