Abstract

In India there is a Parliamentary form of Government. The Indian Constitution possesses all the essential characteristics of a Federal Constitution. The Constitution establishes a system of double Government in India with government in the Centre and the government in the State. There is also division of powers between the Central Government and the State Governments and every government is supreme in its own sphere. Governor is the executive head of the State. Article 153 of the Constitution of India creates the Office of the Governor. One person can be appointed as Governor for two or more States.

Article 155 says “The Governor of a State shall be appointed by the President by warrant under his hand and seal”. Governor is the Constitutional head of the State. The President appoints the Governor of a State. The Governor of a state plays a multifaceted role and acts as a vital link between the Central and the State Government. He exercises many powers. Among his multifarious functions, one of the most important functions that the Governor has to exercise is the appointment of the Chief Minister and his Council of Ministers. It is the Governor who dismisses the Chief Minister and brings an end to the life of the State Council of Ministers. Temporary law making power by the executive has been vested in the Governor. The founding fathers of our Constitution had deliberately conferred certain special and extraordinary powers on the Governor. Vesting the Governor with discretionary powers was justified even in the Constituent Assembly on the ground that the Provincial Governments are required to work in subordination to Central Government.

The Governor will reserve certain things in order to give the President opportunity to see that the rules, under which the Provincial Governments are supposed to act according to the Constitution or in subordination to Central Government, are observed. Governor is the executive head of the state and the discretionary powers conferred in governor under Art 163 make him strong. Art 163(1) & (2) lead to following preposition:

- Governor is required to discharge certain functions in his discretion “by and under” the constitution, this envisages that the discretionary power need not be express but may be necessarily implied. In the discharge of this function he is not required to seek the aid or advice of his council of ministers. Whether the function fall within its purview is to be decided by the governor in his discretion. The validity of anything done by governor is not to be challenged on the ground that” he ought or ought not have acted in his discretion.” The given preposition has assigned wider power to governor to act in his discretion in relation to various important matters such as, under Art. 164(1), Art. 200, Art. 356 etc.

Article 164 (1) of the constitution of India confers a discretionary power on the governor to appoint the Chief Minister of the State in case there is no majority of the single party. The Governor is not required to act on the advice of the Council of the Ministers the only effective limitation on his discretion is that he has to appoint that person, as C.M, who he believes will be able to prove majority support in the assembly. So in case of a crisis where no single party is in position to prove majority Governor can call any party may be coalition or single largest party to form government by proving majority.
Article 200 of the constitution of India confers power on the governor to reserve any bill for the assent of the president, which he feels derogates the power of High Court or any other bill for that matter which, he feel, may cause a threat to security integrity and sovereignty of the country. State Legislature cannot execute any bill until and unless the Governor has signed it. Article 356 of the Constitution of India confers discretion in the Governor in making a report under Art. 156, invoking president rule in the State, on the basis of breakdown of the constitutional machinery of the State. Whether the constitutional machinery of the State has been broken down or not has also to be decided by the governor only because the decision whether presidential rule should be implemented in the state or not is to crash down the government of the state and hence it is not possible for Governor to rely on the suggestion of Council of Ministers and hence it become mandatory for Governor to act in his discretion.

The Governor is also entitled to act in discretion in the cases where he has been empowered by President under certain statutory provision, to act in his discretion, or where he feels that he is required to act in his discretion. The act of the Governor many times shows without any justification and with malafide intention. In Jharkhand, Jharkhand Mukti Morcha chief Shibu Soren was sworn in as Chief Minister hurriedly, in a hush-hush manner. Governor Syed Sibtey Razi gave him three weeks time, to prove majority on the floor of the House, although he did not enjoy majority support. As against it, NDA had pre-poll alliance; it was the single largest party and enjoyed the support of 41 legislators in a House of 81 members. Shibu Soren remained as Chief Minister illegally for 8 days. The Apex Court had earlier taken exception to the Governor’s decision of inviting Soren to form the Government. By doing so, the SC sought to save democracy and stopped Razi from playing ‘fraud’ with the Constitution. A Governor has discretionary powers to invite a leader of a political party, enjoying majority support, to form a government, but in a given situation, when the Governor behaves wryly, the SC has to intervene to save democracy. Jharkhand Governor ‘defrauded’ the Constitution by appointing Shibu Soren as chief minister. It raised a lot of political dust.

**Object of the study:**

The main objects of the present study are:

1. To ascertain the theme of the framers of our constitution regarding the office of the governor.
2. To identify the discretionary powers of the governor under the changing perspective of the Office of the Governor and that to what extent governor should use these powers and to search out the means to plug the lacunae in exercising these powers.
3. To ascertain the interference of the courts in the use of discretionary powers of the governor.

**Result:**

Governor has the discretionary powers to be used in his discretion. He should act as per provisions of the constitution and in the interest of the people of the state.