

Centre State Relations in India

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Week 05: Legislative Relations: Interpretation of Lists, Pith and Substance, Territorial Nexus and Related Areas

Lecture 22: Legislative Relations of Union and States in relation to role of Governor

Greetings to all of you. We have been discussing legislative relation and in that an important area to discuss is how Governor is playing the role on the Centre State relations and in this regard today we will be discussing the role of the Governor and how Constitution envisages a situation where Governor plays an important role in bridging the relationship between the Centre and the State. What kind of Constitution position is there where Governor has been asked to play a critical role on the Centre State relation and then in recent time the court has given certain guidelines with regard to the functioning of the Governor on the subject matters that is what we will also discuss. Now when you look at the positioning of the Governor, ideally Governor is considered to be a constitutional head of the province on a similar line with the President of the country. So, per say Governor when it comes to the relationship in a State it seems that Governor has a role of titular head and it goes by the aid and advice of the Council of Ministers. But then there is another important role of the Governor which we have discussed in previous sessions where Governor is also representative of the Centre.

When I say representative of the Centre without any drawing relationship of subordination Governor is not an employee of the Centre. So, Governor is a representative of the Centre to look at that whether the functioning of the Constitution in a State is happening as per the constitutional scheme or not and there where Governor plays an important role in in bridging the gap between the Centre and the States or drawing the linkage between the Centre and the States. So, in that

relation when you look at the role of the Governor on the theme of this NPTEL course we would like to discuss that how the Governor has been has been has been playing the role.

So, off late it has been seen that the Governor in a State is having a conflict of situation is being generated with the State government and that kind of conflict raises an important question on constitutional propriety on both the Governor as well as the State government. On the one hand it has been stated that Governor shall go by the aid and advice of the Council of Ministers. On the other hand Constitution also mandates that the Governor shall ensure that the functioning of this State government shall be in accordance with the Constitution. So, possibly because of this dual responsibility which has been interested upon the Governor we are forcing a conflict in in some of the States. And because of that what is been happening is that some of the States have approach the court of law to get a clarification on the role the positioning of the Governor particularly on a matter of assent to the Bill that how that is subject matter is to be dealt with.

Now when we look at the role of the Governor vis-a-vis the State government and vis-a-vis the functioning of the State Legislature, Sarkaria Commission lays down an important guideline where it says that Governor as a head of the State has “a right to be consulted, to warn and encourage” and it says that Governor has a role of “a friend philosopher and guide” towards the Council of Ministers. So, when you when you look at it in a very objective way you find that that Governor shall try to see that the functioning of the State government must be done in a very constructive way for the welfare of the people that is what is something and this asked for. So, the question becomes very important when the situation has been envisaged situation has been forcing where Governor can take a call without looking into the aid and advice of the Council of Ministers. For example, the matter of appointment of the Chief Minister, the matter on testing the majority on the floor of the House, the matter of the dismissal of the Chief Minister when the Chief Minister does not have a confidence of the House or on the matter of dissolution of the Assembly or recommending the President’s rule. So, these are certain stances and certain specific situations where one can very well see that to what extent Governor can really take a call on his own and whether such call by the Governor would unnecessarily lead to a kind of conflict between the Centre and the State. So, these are the constitutional provisions which talk about the linkage between the Governor and the State Legislature.

For example, Article 163 says that Governor shall go by the aid and advice of the Council of Ministers, Article 168 talks about the role of the Governor as a part of the State Legislature. It is the Governor who summons the House, prorogues the House and then Article 171 states about Member to be nominated by the Governor in the Legislative Council in those States which have got Legislative Council. Then responsible to the Governor to summon to prorogue and dissolve the State Assembly under Article 171. Article 175 which talks about addressing and giving message to the State Assembly by the Governor in the beginning of every session in every year. Article 176 states about a special address by the Governor. Article 200 which is important one which will be discussing assent to the bill and Article 207 which talks about recommendation of Governor for introducing Finance Bill and Article 213 Governor's power to promulgate Ordinance. Now, now when you look at the Governor and the legislative relation as we have seen that Governor on the lines of the President is also part of the Legislature because any Bill which is passed by the Legislature should get an assent from the Governor to become a law that is why he that is how he becomes an integral part of the State Assembly. And because of that you also find that Governor has been given a role with regard to or vis-a-vis the State Assembly where Governor summons the House, prorogues the House and dissolves the Legislative Assembly. Then all this he does it is been stated that not in his personal capacity he must go by the advice of the Council of Minister and which is binding upon him. Though we have seen that in the past Governor has not gone by the advice of the Council of Minister and when the matter has gone to the court of law advisory has been given to the Governor or court has very clearly said that in this subject matters the Governor does not have any discretion to exercise he must go by the advice given keeping the parliamentary practice in mind and tradition of parliamentary democracy which has been adopted under the Indian Constitution.

Now coming to an important area of assent to Bills where Governor plays an important role. As I said that in recent time it has attracted attention of the court of law because in certain States the Governor is not giving the assent or withholding the assent or reserving it for the consideration of the President. Now once the Bill is passed, Bill requires an assent by the Governor, but at the same time Article 200 gives different options to the Governor. If you read Article 200 of the Constitution it gives three options. It says that Governor can very well assent the Bill, he can very well withhold the assent or he can reserve the Bill for the consideration of the President. Now the matter has gone

to the Supreme Court in a case of *State of Punjab v. Principal Secretary to the Governor of Punjab* wherein the question was raised with regard to the role of Governor on the issue of summoning of the House. The court in this case has looked into the power of the Governor with regard to assent to the Bill with regard to withholding assent or with regard to reserving the Bill.

The court in this case has looked into the language of first proviso to Article 200 and in the first proviso the expression used is that Governor may “as soon as possible” return the Bill. So, the court has said that when you look at the expression “as soon as possible” the court says an obligation on the power of the Governor to decide on the subject matter decide on his future course of action at the earliest. He shall not sit over that decision and cannot simply delay the entire process. So, that is what the court says that the scheme of the constitution is very clear that he can return the Bill and if he returns the Bill then the State Legislature is duty bound to reconsider the Bill and if the Bill is reconsidered and again it has been referred back to the Governor then again, it has been sent back to the Governor then Governor shall not withhold the assent. So, there is a clear instruction which has been given to the Governor that you can you can send it for reconsideration and once the Bill has been reconsidered by the house it comes back to you then you must give an assent that is what is the scheme of Article 200 first proviso says.

Second proviso to Article 200 talks about reserving the Bill for the consideration of the President. It says that if the Governor believes that the Bill contains certain provisions which may derogate the power of the High Court then in such a situation the Bill can be reserved for the consideration of the President and in such a situation the President can look into the content of the Bill and then President can also send back the Bill for the consideration to the House and House is bound to look at the subject matter and message conveyed by the President. In such situation it is important to note that again the assent has to come from the President assent should not come from the Governor. So, if the President has returned the Bill if for reconsideration to the House or to the Assembly and if the Assembly has looked into the comment of the President or message of the President and again decided to return it back to the President, it is the President who has to give assent. Now, the question is which the court has taken up that what is the scope of discretionary power of the Governor in reference to Article 200. Whether under Article 200 Governor can simply adopt a dilatory tactics and not to give assent to the Bill not even referring it to the President?

So, what it shall do? The court in this case of *State of Punjab v. Principal Secretary to the Governor of Punjab* wherein categorically said that the language is very clear there are three options and with the first option it says that “the Governor may” in contrast second proviso it says “Governor shall not assent”. So, in first proviso what it says that if the Governor is of the opinion that the Bill requires reconsideration and for that it sends back to the Assembly then it must be done at the earliest. Whereas, in the second proviso discretion has not been given to the Governor, if it is been found that the Bill has to do with the power of the High Court then it has to be sent to the President for his or her consideration that is what the law says. So, it categorically said that the first proviso attaches to the second option (withholding of the assent) and hence begins with an enabling expression “may”. So, there is a possibility of withholding, but then it cannot be for indefinite period. It has to be taken up on a defined timeline.

Second proviso is in the nature of an exception to the option which is granted to the Governor by the substantive part of Article 200 that is for reserving the bill for the consideration of the President. So, that is what the court draws a distinction between first proviso and second proviso and accordingly the court comes up with a proposition that as far as giving assent to the Bill is concerned as far as withholding the assent to the Bill is concerned it has to be done on an immediate basis it cannot be for indefinite period. Governor shall not be allowed to sit over the legislative proposal of the government for infinite period. So, court categorically says that first proviso allows the Governor to send a Bill except in cases of Money Bill back to the Legislature. If the bill is passed again then Governor does not have any discretion Governor has to give the give the assent, Therefore, the discretionary power available with the Governor is very limited and that is what the court has to look into it.

Further it says that the role which is given to the Governor of sending it back for reconsideration to the House is only recommended tree ah. It is up to the Legislative Assembly to look into the message given by the Governor and to act upon it or to not to act upon it. It is not binding on the Legislative Assembly to implement the advice given or implement the message given by the Governor with regard to that Bill. Now, when you read this judgment one question comes to our mind is that that there are three options given. So, this judgment in a way gives guidance on the second option of withholding the Bill – it can assent or withhold the Bill. Now, when you look at the three options either that he assents to the Bill, withholds the assent and reserves the Bill.

Now, withhold the assent what court does here is that court has given a kind of direction to the Governor for the second option that when you are withholding the assent you must do it for a reason and you must act upon it within a reasonable time frame. That's what the court tries to bring in an element of rule of law on functioning of constitutional office that every constitutional office is bound by the rule of law and that is what is the dicta of the Constitution that because you are holding an office and you have taken an oath of upholding the Constitution and carrying out your function as per the Constitution you should not get into a situation where your action should not lead to a situation where there should be a deadlock between the State government and the Governor. So, you must take a call when you withhold the assent. You must take a call that why you have withheld the assent and what are the reasons and send the message to the Legislative Assembly. Let the legislative Assembly deliberate upon it and send back the proposal to you. So, this is what is important when you look at this judgment of Supreme Court in the State of Punjab v. Principal Secretary to the Governor of Punjab. Now, withhold assent till what time that's what an important question is. It says as soon as possible. So, the Supreme Court looks into this expression of "as soon as possible" and it says that that is a constitutional imperative of expeditious decision making has to be there. Failure to take a call and keeping a Bill duly passed for indeterminate periods is a course of action inconsistent with that expression. Because Bill is an expression of will of the people and therefore, the Governor shall not simply sit over it. There has to be a call with the Governor is required to take and that is what the court says in another case of State of Telangana v. Governor of Telangana. The court says that "as soon as possible" has significant constitutional content and must be borne in mind by constitutional authorities. The Governor cannot be at liberty to keep the Bill pending indefinitely without any action whatsoever. So, some action is required either you send it to the President for his or her consideration. So, constitutional propriety demands that Governor is equally bound by the values of the Constitution and must decide as per the scheme given under Article 200 and take a decision accordingly.

An important question in this regard comes in is with regard to assent to the Bill. Whether assent to the Bill is also justiciable in nature? Can it become a subject matter of judicial review, particularly when it goes for the consideration to the President of India? Whether that is subject matter of judicial review? The reason being that President is not part of the state legislature and the constitutional scheme says that President is required to look at the matter President is require

to look at the matter based on substance and it is not merely a kind of empty formality. So, so in such situation court can very well look into the reasoning given by the President for denying the assent that is what kind of reference we find from these cases of Sowdambigai Motor Services v. State of Tamil Nadu and Gram Panchayat v. Malwinder Singh. So, there is a possibility of judicial scrutiny on the decision making by the President on denying the assent to a Bill.

Now we decided to also discuss this issue of remission and Governor's role because recently on the matter of releasing the convict of the assailant of former Prime Minister Rajiv Gandhi came into discussion where the Governor has referred the matter to the Centre for taking the advice. So, there again we are trying to connect to the Centre State relation. Now when you look at the issue of remission Articles 161 or 163 categorically give this power to the Governor and that power to be exercised in consultation with in advice of the Council of Ministers. So, there is a clear distinction on the role of the Governor on this matter and the role of the President on this matter. The matter shall be referred to the Governor Article under 161 only with regard to those offenses which are offenses under the State law and to the President which are offenses under the Union law that is what is the distinction made except in cases of death penalty. So, there is a clear distinction.

Now what has happened is in this case of A.G. Perarivalan v. State of Tamil Nadu that it is the Council of Minister of the government of Tamil Nadu suggested for remission of the convict. Governor of Tamil Nadu referred this recommendation to the President. Court has said in this case that in this matter there is a no constitutional pathway designed for involving the President. This is solely within the prerogative of the Governor and that to prerogative of the Governor as per the scheme of the Constitution which means that Governor shall go by aid and advice of the Council of Minister and therefore, such reference of the Tamil Nadu Governor is unconstitutional. Tamil Nadu Governor should have avoided referring the matter to the President on this remission matter. We find that Governor also plays an important role on the matter of identifying the marginalized sections who are beneficiaries under the constitutional scheme.

So, that also we are bringing it within Centre State relation because we are trying to bring in that how this office plays an important role on the issue of Centre State. So, Article 342 where it says that Governor to be consulted by the President to specify class, caste to be called as a Scheduled

Caste. Article 342 again Governor to be consulted by the President to specify tribes or tribal community to be called as a Scheduled Tribes and Article 342A which is with regard to socially and educationally backward class for the State list. Obviously, when we say Governor it has to be read as the Council of Ministers of that State. That's how we need to read it these are the references for this lecture. Thank you.