

Centre State Relations in India

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Week 02: Administrative Relations: Distribution of the Subjects; Obligation of the Centre and the States

Lecture 08: Governor's role and control of Centre

Welcome to all the learners, today we will discuss under module 2, the role of the Governor and how the Governor's role is getting controlled by the Centre or what is the relationship between the Centre and the Governor, because this becomes a very important topic on understanding the administrative relations between the Centre and the States. We will cover the historical context that what is the origin of the office of the Governor. We will also study that what has been debated in the Constituent Assembly Debates with regard to the position of the Governor, how the Constitution of India has envisaged the role of the Governor. Additionally we will also understand that what are the stages or situations in which the Constitution has entrusted the discretionary function upon the Governor and also we will try to understand that why the Constitution has entrusted a special responsibility upon the Governor on certain specified subjects. Along with that lastly we will discuss that how the court has discussed the issue of power and function of the same Governor and how the court has made an attempt to reconcile the conflict if any between the office of the Governor and the State government or the Central government. So when we look at the office of the Governor generally what we find is that Governor becomes a very important position in the State Executive because State Executive comprises of the Governor and the Council of Ministers along with the Chief Minister.

So office of the Governor plays a multifaceted role. The office of the Governor plays as a role of agent of the Centre in a way that it has got a responsibility to see that things are functioning in the State as per the constitutional obligation and constitutional mechanism. So, one may say that

Governor acts as an ear and eye of the Centre. On the lines of the President, Governor is also the constitutional head of the provincial unit of the State helping the Centre to discharge the constitutional functions and responsibilities towards the State. Now the debates and discussions with regard to the office of the Governor and its role as the Centre's representative in the States you would find that the Governor has been given a kind of dual responsibility where it acts as a Centre's representative for a purpose of ensuring that the State government runs as per the constitutional mechanism, constitutional provisions, constitutional ethos and at the same time it is also State head, constitutionally it is a State head on the lines of what we see in the with the office of the President. Now locating the very history that how this idea of office of Governor has originated. It seems that the origin of the office of the Governor can be traced back to the East India Company coming to India and started governing certain parts of the country.

So historically the word Governor is associated to Portuguese Afonso De Albuquerque who held the position of Governor and Captain General in India in the year 1509 that is not how we see that this term has come into existence in the Indian context. After that we find that Governor continues to become a very important office for governing the provincial unit that is how you find that in Government of India Act 1935 Chapter II talks about the office of the Governor and Section 48 of Chapter II of the Government of India Act 1935 details the appointment of the Governor and those days it was the appointment by the Crown to be done by the Crown to govern the State. Section 50 required that Governor to act on the aid and advice of the Council of Ministers so as we know very well that 1935 Act introduced a parliamentary system of governance in this country. Therefore, this provision is there where it says that Council of Ministers advice is to be taken by the Governor, but at the same time Government of India Act 1935 also entrusted special responsibilities to the Governor like mentioning peace and tranquility, interest of minority, protection of rights of Indian State. These are the areas where Governor has got a direct responsibility and Governor did not go by the advice of the Council of Ministers that is what was provided under the 1935 Act.

Now when you look at how this position has been debated in the Constitutional Assembly Debates you would find that there has been intense debate on the position of Governor and the office of the Governor because basically the debate was on this two point that should it be a directly elected office or should it be a kind of nominated office how do we read this positioning

of this office. So, the nature of the governorship appears what we see in today's context is something which has been discussed in the Constitutional Assembly Debates which was discussed on May 30 and 31, 1949. The responsibility has been given to the Provincial Constitution Committee to suggest that how the Governor's position is to be viewed and how it should be seen in the independent India. We observe that the Provincial Constitution Committee has suggested that the Governor should be directly elected by the people of the State and that's what it says when you look at the Draft Article 131 of the Draft Constitution you find that the Governor was to be elected directly by vote and second the Governor shall be appointed by the President from the panel of four candidates selected by the Legislative Assembly and Legislative Council and then we have got Draft Article 155 which says that that the President should have a power to appoint the Governor. So, these are the provisions which bring this point home that as far as appointment of Governor is concerned there has been a kind of debate that what shall be the method of appointing the Governor – should it be directly elected or should it be indirectly elected how the entire process should continue.

So when we go deeper into the debates which took place in the Constitutional Assembly we found that there was a kind of divide in the Constitutional Assembly on the powers of Governor where it was said that let there be office of the Governor part of the independent Constitution. At the same time should it be seen as an agent of the Central government as it was under the colonial rule? So what should be the scheme, how this should be read as. So two most important aspects of the Assembly Debate became whether the Governor should be elected or nominated and whether he or she should be given a certain discretionary power. Now as far as the Chairman of the Drafting Committee view is concerned, Dr. Ambedkar referring to Governor's position as ornamental called his powers limited and nominal. One of the members who was hailing from Odisha and later on became Governor of Uttar Pradesh he also expressed his apprehension by saying that the Governor had been nothing but a cipher. So now when you look at the power and function somewhere it was been clearly indicated that though the office is required but that office should have a limited role to play. It should not become directly responsible to the people and that's what even when you look at the views of Pandit Nehru, K.M. Munshi or P.S. Deshmukh. They argued that the Governor should be nominated head of the State to be a detached figure rising ever from politics. So this was a kind of idea that when the appointment of the Governor

happens the person who shall be appointed as a Governor he or she should not be in active politics. He or she should not be involved in the politics of the State and therefore it would be easier for the person concerned to discharge the responsibilities in efficient way. Mr. Rohini Kumar Chaudhury also raised the concern that the discretionary clause attached to the office of the Governor does not make it symbolic post and Mr. Deshmukh said that the Governor office would act as a link between the provincial autonomy and the President and the Government of India. So when you look at the positioning of the Governor in the debate, concerns were raised that if you make the Governor directly elected then there is a possibility that Governor may start assuming the responsibility that it has got a direct responsibility towards the people and may not go by the views of the elected government.

Therefore very rightly it was decided that let the position of the Governor be nominated and let the Centre appoint the Governor. Let the President has got a responsibility to appoint the Governor on the recommendation of the Central government. We read this recommendation as aid and advice of the Council of Ministers given under the Constitution where President has to act on such aid and advice. So that's what a kind of mid path which was which was thought under the Indian Constitution where position of the Governor unlike the President was not an elected position it was a nominated position but the same time it was also ensured that Governor becomes a kind of bridge between the Central government and the State on the one hand and on the other hand it becomes a constitutional head of the province, constitutional head of the States. Now when you look at the role of the Governor as it has concretized under the Constitution of 1950 we find that the Governor plays a dual role. It is a constitutional head of the State and at the same time, it also represents the Centre, it is a sort of representative of the Centre in the State. When you say representative of the Centre at the State we need to understand that the under the constitutional scheme it is the responsibility of the Centre to see that that governance in India is to be run as per the constitutional scheme and who shall be the responsibility to see that Constitution is being followed in letter and spirit it is the Central government. That's how we also read in the context of Article 355 of the Constitution which imposes an obligation on the Centre to see that there should not be any constitutional breakdown, there should not be any failure of constitutional machinery. So, when we read it in the context of the power of the Governor, one can very well say that it is the responsibility of the Governor on behalf of the

Centre to see that everything runs in the State as per the scheme of the Constitution as per the philosophy as let down in the Constitution. So representative head has to be understood only in this limited sense nothing beyond that. The executive power of the State is rested in the Governor this is something on the lines of the relationship between the President and the Central government. So executive actions are taken in the name of the Governor and the Governor is part of the State Legislature again something what we see on the lines of the President where Governor has got a power to right to summon the House, to address the House, to dissolve the House and Governor also has got a power to promulgate Ordinance.

Governor also exercises a sort of judicial function. When I say judicial function it is not to be understood judicial function as excised by the judiciary. It is something which is judicial in nature where as a constitutional head of the State it has got a power to pardon, to respite and to remit in the cases of conviction of an of a convict. So, this is something which is the role of the Governor as provided in under the Constitution of 1950.

Now when you look at the representative the Centre, how we should visualize that what is the role of the Governor vis-a-vis when you see there is connect with the Centre. So the Constitution says that President is the sole authority to appoint the Governor. Now here we need to understand very categorically as I said that President here does not mean President in his personal capacity. It is the advice of the Council of Ministers on the basis of which the President appoints the Governor. So, basically the reference recommendation comes from the Union government and on that basis the President appoints. Though the Constitution provides that the tenure of the office of the Governor shall be of five years but the same time it also provides that the appointment shall be based on the pleasure doctrine appointment, so tenure of the Governor at the discretion of the President. So along with the five year there is also provision which says that Governor can be removed at any point of time because the appointment is based on the pleasure of the President and as we know that the pleasure based doctrine appointment confers a power on the appointing authority to dismiss the appointee without assigning any reason. So this is something which has been done again to ensure that that the office of the Governor should not cross that boundary and stop following the constitutional mandate of adhering to the values and if the situation rises then the Union government can step in through the President and can dismiss the Governor. Though in practice what we observe is that the story is different. We have seen

that with the change in the government the Governors get removed from their offices. Governor's duty to inform the developments and local condition in the State and it also acts as an agent of the State in case of failure of constitutional machinery. So, when it has been observed that the State is not running as per the constitutional scheme, if it is not adhering to the philosophy, it is not running as per the Constitution then presidential rule is imposed and in that case it is the Governor who runs the State on behalf of the Centre. Then the Governor also acts as a link between the Centre and the State and it is suggested that Governor should be impartial in assisting the President, Governor should be above party lines, political alignments. It should truly discharge the responsibility as a constitutional office bearer and not get into the day to day political situations of the State. Now when you look at the role of the Governor vis-a-vis the State government there are provisions which connect the Governor with the State functioning of the State government. For example Article 174 confers power upon the Governor to summon, prorogue and dissolve the House. Article 175 makes mandatory that Governor shall address the House and give a message to the House. Article 176 provides for a special address by the Governor. Article 188 says that member of the House to subscribe oath before the Governor and then Article 200 assent to Bill passed by the House this is something which becomes very important because here Governor has got a discretion to also withhold the assent and reserve the Bill for the reference to the President and to get the opinion of the President on such reserved Bill. Article 201 it connected with Article 200 where Governor has got a power to reserve the Bill for consideration and Article 207 again it says that Governor's approval to move certain Financial Bill is mandate. Article 213 talks about power to promulgate Ordinance which is again similar to what is there with the President under Article 123 of the Constitution. Now there is a discretionary function of the Governor when you look at Article 163(2) which certainly gives a discretionary power to the Governor and says that decision of the Governor shall be final. For example Article 239(2) says Governor to act independently of the Council of Ministers if the Governor acts as an Administrator of Union Territory.

Article 371A(2)(b), (d) and (f) confer discretionary power with regard to Tuensang district which is related to the governance of the tribal areas. Article 174(1) which talks about the appointment of the Chief Minister. Obviously on the matter of appointment of Chief Minister Governor did not go by the aid advice of the Council of Minister that is something which Governor decides on

his own. Obviously it is suggested that while deciding so Governor should go by the constitutional convention and not to be very subjective in his judgment. Then Article 356 is another provision where Governor submits a report to the Union government on the functioning of the State government if such functioning is not as per the constitutional provision. Then it says that such report can be submitted to the President by the Governor on his own. So, obviously such report need not be report as forwarded by the council of Minister. It has to be an independent report to be prepared by the Governor and submitted to the office of the President.

Then as I said Article 200 also talks about reserving the assent to the Bill where the Governor believes that the Bill may go against the federal ethos, Bill may go against Central Act if there is any confusion with regard to the kind of overlapping or some kind of conflict then in such situation the Governor can very well reserve the Bill and refer it to the for the opinion of the President. So, discretionary power is vested in the Governor. There is a role which is given to the Governor which is different from the provisions of the President because in relation to the office of the Governor, the Constitution categorically entrusts the discretionary function upon the Governor and very clearly stipulates such provisions where Governor did not go by the Council of Ministers advice and can act independently. When it comes to special responsibilities, particularly in relation to tribal areas where possibly the scheme or the agenda or the vision of the makers of the Constitution has been that let the Central government also take the direct responsibility of improving socio economic conditions of the people living in those areas. That is why when we read the special responsibilities of the Governor it has to read as something where the direct responsibility is there with the Centre to look after the welfare of the people residing in those tribal areas. That is how you see Article 371(2) where responsibility to take steps for development of Vidarbha and Saurashtra is given. So Article 371A(1)(b) talks about responsibility to maintain law and order as long as the internal disturbance caused in Naga Hills-Tuensang Area is there. Article 371C is there where proper functioning of the Committee of Legislative Assembly of the State of Manipur. Then Article 371F for peace and equitable arrangement for ensuring social and economic advancement is there. All these provisions are related with the places where tribals are in good population, where the areas are well populated by tribals.

Now time and again there has been reconsideration and revisiting of the power and function of

the Governor because it has been observed that the office of the Governor has not been allowing the State government to discharge the functions discharge the responsibility in a very smooth manner and they unnecessarily keep on interfering with the functioning of the State government. Therefore Commissions have been constituted and given the task of revisiting the role of the Governor. One very prominent commission is Sarkaria Commission which categorically suggested that as far as the role of the Governor is concerned it is very critical and at no point one should think about omitting this provision. It says that Governor is the linchpin of the constitutional apparatus of the State. So it holds a very important position as far as the constitutional provisioning is concerned. What it suggested is that in order to see that Governor appointed in the State should also have a kind of alignment with the State government or role of the State government in the matter of appointment of the Governor. It suggested that let the Chief Minister of the State should be consulted in the matter of the appointment of the Governor that is what it says and it also says that the Vice-President and the Speaker of Lok Sabha may be consulted by the President in selecting a Governor because as of now the practice is what you find is that it is entirely for the Council of Ministers to suggest a name to the President and that person gets appointed as a Governor. So in order to make the process more democratic and in order to ensure that there is participation also of the State government, Sarkaria Commission has suggested that.

Sarkaria Commission has also suggested that the tenure of the Governor must be fixed for five years. This suggestion has been given in the light of the very practice where with the change of the government at the Centre, it has been observed that there is a removal of the Governor in those States where the party different from the party coming to the power at the Centre is ruling. So in order to avoid such kind of situation, in order to not to make the office of the Governor a kind of lighter office it has been suggested that let the tenure be fixed for five years which is which is sort of constitutional mandate also. This has been suggested purely to make the office of the Governor insulated from the political developments or something which is to be seen as insulated from electoral politics of the of the country. It says that Governor may in the exigencies of certain situation exercises discretion to summon the Assembly only in order to ensure that the system of responsible government in the State works in accordance with the norms envisaged in the Constitution. So there again it is suggested that if the State government at any point of time is

not following the constitutional norm then in such a situation, in order to ask the State government to satisfy the majority on the floor of the House, the Governor can summon the Assembly. But it has to be done only when Governor is very confident that such situation has a rise and where State government is not acting as per the norms of the Constitution.

Now we it has been also observed that apart from constitutional responsibility which is entrusted upon the office of the Governor, the office of the Governor has also been given certain responsibility under an ordinary law or ordinary statute, i.e., one such position is the position of the office of the Chancellor for State Universities. So what is been said is that that there is no obligation of the Governor in his capacity as Chancellor always to act on ministerial advice under Article 163(1) because office of the Chancellor is different and office of the Governor is different. So as far as discharging the responsibility of Chancellor is concerned it is advisable that Governor would be acting on his own. So, discretionary power of the Governor as provided in Article 163 should be left untouched. Sarkaria Commission has also suggested that is not advisable to tinker with the discretionary power it is suggested that let discretionary power continue to be there with the Governor.

So this is this is something where a kind of reaffirmation of what has been thought about by the framers of the Constitution that element of discretionary power should be there with the office of the Governor that is what precisely Sarkaria Commission has also suggested that let it continue because situations may arise where a Centre has to step in and such intervention on the affairs of the State should be through the office of the Governor. As I said that there are provisions which say that Council of Ministers advice is not needed for the welfare of the tribal areas and that is how you find that this Article 371 where it says that Governor can act in on the discretion.

Then there is another Commission which has been constituted Punchhi Commission. The Commission also looked into the role and responsibility of the Governor where what it suggested that wherever the power has been given to the Governor to exercise in his own discretion it said that that discretionary power has to be construed in a very narrower sense. It should not be construed so that Governor makes the State government irrelevant and always exercises the discretion. So Punchhi Commission has suggested that the discretionary power conferred upon the Governor is not of a general nature and as far as possible it should go by the advice of the

Council of Ministers because Council of Ministers are directly responsible to the people under the parliamentary democracy. It further suggested that as far as the appointment of Chief Minister is concerned a Governor should go by the constitutional convention. The constitutional convention is that Governor should invite the leader of a party which has got a largest number of seat or pre-coalition or the parties which have formed a coalition pre-poll and then if that is not there then obviously the Governor should invite the leader of post poll coalition parties.

So, some kind of limitation has been laid down on the discretion of the constitutional power or discretionary power of the Governor while making the Governor to follow the constitutional convention. On the appointment of Governor as Chancellor it is been suggested that Governor should not be burdened with the positions in power which are not envisaged by the Constitution and his role should be confined to the constitutional provisions only. This is one way also to avoid the conflict between the State government and the Governor when such responsibilities are interested through the ordinary law. Now judiciary has been given more than one opportunities to discuss on the issues of role of Governor and how the role of Governor should be seen in the constitutional scheme which is obvious the Centre and the States. So one important case is the Rameshwar Prasad v. Union of India where the Governor of Bihar has dissolved the Assembly on the ground of horse trading.

The court has said that Governor can exercise discretionary power on matters that are not mentioned in the Constitution but the phrase "required" which is there under Article 163 it signifies that whenever the Governor is exercising the discretionary power there has to be a kind of necessity. It must have arisen out of necessity unless there is a compelling necessity Governor should refrain from exercising discretionary power because that we need to understand Governor is not an elected office and therefore, Governor needs to be very careful in exercising discretionary power which has been entrusted upon the office of the Governor under the Constitution. Samsher Singh v. State of Punjab is another important judgment where the court has said that when it comes to the report prepared by the Governor under Article 356 which is with regard to presidential rule it must be said that Article 356 must be regarded as a function to be exercised by the Governor on his discretion. Governor should not go by what the State government is saying. This has to be an independent report from the Governor to the President. So, that President can arrive at the decision in a very objective way. Another important case where the court has

clarified that the office of the Governor should not be seen as an employment under the Central government when it says representative of the Centre it should not be understood that Union government has employed the Governor and there is an employer employee relationship between the Governor and the Central government that is what the court has clearly clarified in *Hargovind Pant v. Raghukul Tilak*.

Jogendra Nath v. State of Assam which is a Gauhati High Court judgment, where the court has said that Governor has got a sole and exclusive authority to appoint Chief Minister. The Gauhati High Court has clarified regarding who shall appoint a Chief Minister. *Nabam Rebia v. Deputy Speaker, Arunachal Pradesh Legislature Assembly* again the court has said that as far as discretionary power of the Governor is concerned it must be exercised with objectivity though this case largely pertains with the power of the Speaker but on the issue of discretionary power the court has said that objectivity must be a driving factor for exercising discretionary power. Then there is an important decision taken in a recent time – *State of Punjab v. Principal Secretary to the Governor* where it has been said that if a Governor decides to withhold assent to a Bill then he has to return the Bill to the Legislature for reconsideration because of late it has been observed that Governor is reserving the Bill and delaying the entire process of the approval of the Bill and because of that governance is getting adversely affected. So, on this the Supreme Court has made a pertinent intervention and said that if under Article 200 the Governor decides to withhold then the Governor must return back the Bill because that because as per the parliamentary democracy it is the domain of the Legislature to again reconsider and decide on such Bill. Governor should not retain the Bill for undue period. This 2010 judgment is another important intervention by the judiciary through *BP Singhal v. Union of India* where the court has in a way reconciled between the provisions with regard to fixed tenure of the Governor of 5 years as well as the appointment based on pleasure doctrine.

The court has said that Governors cannot be removed on the grounds that Governor is out of sync with the policies and ideologies of the Union government because it is an important constitutional office. So, only because Governor has got a different ideology should not become a reason for the Central government to remove the Governor. In this case the court has also said that any such Governor who has been removed from the office has got a locus standi to approach the Court of law for such unconstitutional action on the part of the Central government. So, that

the court can review the action of Central government and decide on it. Though this case has been decided in 2010 after that we have seen that the Governor getting removed by the Central government, but there has been no instance where such Governor has approach the court challenging the decision of the Central government of removal. So, possibly if there is relaxation of locus standi we may find that public interest litigation coming to the court of law for challenging, assailing the removal of the Governor on the very ground that the ideologies are considered to be a factor for removal of the Governor and to see that how BP Singhal judgment is getting implemented by the Supreme Court. So, as of now this is a good judgment to see the court reconciling, but how it is given a practical effect is yet to be seen. This is another recent judgment where the court has talked about the relationship between the Governor as a Chancellor and the State government what shall be the responsibility. In this case the court has again reiterated that as far as Governor is concerned when it is acting as a Chancellor it is acting in its personal capacity and it is nothing to do with the responsibility given to the Governor on the matter of constitutional role and responsibility under the Constitution. So, that is what was clarified in Dr. Premachandran Keezhoth v. Chancellor Kannur University in in in very recent judgment of 2023. So, these are the references for this module. Thank you very much.