

REPLACEMENT OF GOVERNORS AT THE PLEASURE OF THE PRESIDENT A CONSTITUTIONAL CAMOUFLAGE

Dr. Kamasai SVM¹

1 Associate Professor, Department of Law, Koneru Laxmaiah Education Foundation
(Deemed to be) University, Andhra Pradesh

The constitutional intricacies surrounding the replacement of Governors at the pleasure of the President, examining the potential camouflage embedded within this constitutional provision. In many democratic nations, the appointment and removal of Governors are governed by constitutional frameworks designed to ensure stability, autonomy, and the separation of powers between executive and legislative branches. However, the provision allowing the President to replace Governors at their pleasure raises concerns about the potential abuse of power and erosion of democratic principles.

The paper delves into historical and contemporary examples where the replacement of Governors by the President has been controversial, analyzing the constitutional language and its interpretation. It scrutinizes the checks and balances in place, or the lack thereof, to prevent arbitrary removals that might undermine the principles of federalism and local autonomy. Special attention is given to instances where this presidential prerogative is utilized as a camouflage for political motives, threatening the independence of Governors and their ability to serve as effective representatives of their states.

Moreover, the abstract evaluates the impact of such replacements on the functioning of government, state-central relations, and the overall health of the democratic system. It considers alternative mechanisms and constitutional reforms that could mitigate the risks associated with the unlimited presidential pleasure in Governor appointments.

The findings of this research contribute to the ongoing discourse on constitutional reforms, advocating for a more transparent and accountable process for the appointment and removal of Governors. It emphasizes the importance of upholding democratic values and the rule of law to safeguard the principles of federalism and maintain the balance of power within a nation's governance structure.

Keywords: President, Government, Constitutional power

The recent replacement of Governors in various states engendered many controversies under the Indian Constitution which have not been contemplated initially when the constitution of India has been framed and enacted.

The governor of a state is appointed by the president of India² and the Governor hold his office during the pleasure of the president³ and subject to this condition he holds the office for a period of 5 years⁴. The Indian Constitution lays down essential conditions⁵ to be a Governor. However it remained silent as to the removal of Governors. As such this silence ultimately led to unpleasant consequences giving rise to a presumption that the Governor can be hired and fired at the pleasure of the president and as apprehended such apprehension has become true in the light of recent mass replacement of governors in the country.

The Constitution being fundamental law of the land, whether it is expressly laid down or not, any action if repugnant to the Constitution is ultra vires Constitution. It is on the basis if repugnant to the constitutional axiom one should examine the constitutionality of the recent replacement of Governors. In this context it is also relevant to point out that governors in India enjoy a constitutional status.

It is also pertinent to point out in this context that the constituent assembly⁶ after a lengthy and serious debate ultimately preferred to provide for the appointment of the governor by nomination but not by election and accordingly a provision empowering the president to appoint governors has been incorporated in the constitution of India.

Role of president in the parliamentary form of government is also a relevant factor to be considered in this respect. As it is well established in the parliamentary form of government that the president or governors act according to the advice of the cabinet⁷ and thus they are titular heads of the state under the constitution and symbols of the Nation as described by

²Article 155 of the Indian Constitution

³Article 156(1)

⁴Article 156(3)

⁵Article 158

⁶D.D. Basu, An Introduction to the Constitution of India, vide IV CAD, 588-60

⁷Article 74

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Prof. Tope, similarly the governor appointed by the president acts according to the advice of the Cabinet but he enjoys certain degrees of discretionary powers under the constitution⁸.

Admittedly the governor is a reporter between the central and state government and in fact. The office of the governor has now become a balance wheel of the Centre-state relationship⁹.

Since Constitution has left us in obscurity as to the criterion for the removal of the governor and placed his services as the pleasure of the president¹⁰, one should assume that in the light of the constitutional provisions he is removable only on the established violation of the constitution and this alone should be a consideration and nothing else. In this context it will be also pertinent to ascertain another significant constitutional question whether the president is bound by the advice of the cabinet with respect of the removal of the governor or has any discretionary power under the constitution.

A legal luminary and learned commentator¹¹ on the India Constitution answered this question affirmatively and maintained that the president of India can exercise some discretionary power despite the absence of an express provision to that effect in the constitution, this silence of the constitution he observes "because of the difficulty of defining precisely and exhaustively the rare occasions on which it was imperative that the president should regard such advice¹² such implied discretionary powers can be found from Article 60 to 62. As such president in certain cases is vested with a power to differ from the advice of the cabinet if it is unconstitutional¹³.

A meticulous and though consideration of the relevant constitutional provisions reveals that the removal of the Governor merely owing to the change of the government in power at the centre is unjustified in as much as it seems to have been proceeded on the premise that the government has no confidence in the present governors appointed by its predecessor which is not contemplated in the constitution, as such it is unconstitutional. If such powers is conceded it appears that the governor though under the constitution holds the office during the pleasure of the present but now it appears that he continues during the pleasure of the central government. If such notion is left uncontradicted, certainly it establishes a bad precedent to

⁸Article 163(2)

⁹M.P. Jain, Constitutional Law of India, p.180

¹⁰Supra note 2

¹¹H.M. Seervai, Constitutional Law of India, Vol.I, p.1069

¹²Ibid

¹³Ibid

future,¹⁴ consequently the governors become henchmen of the central Government which is ignominious to the prestige of his office.

The Governor who is not a legislator and being appointed by the president the apprehension that there will be a change in their loyalty on the change of the government is evidently baseless since governor sears to uphold the constitution¹⁵, but not to show his allegiance to the government in power at the centre, and as such the removal of the governor viewed from this perspective is certainly unjustified under the constitution since, it is base on a groundless apprehension of the government.

Thus, removal of the governor on extraneous consideration must be deemed to be acts of malafide in the absence of any glaring defect on the parts of the governor in discharging his functions according to the constitution.

In view of the absence of express constitutional provisions pertaining to the removal of the governors it is suggested that a suitable amendment to the relevant constitutional provision¹⁶ shall be made empowering the president to remove the governors only on the established breach of constitution according to his personal satisfaction. It is also necessary to stress that such an amendment is essential to safeguard that prestige and glory and preserve the independence of the governors office and insulated it from political interference.

There appears to be no justification for the removal of the governor on the advice of the central cabinet in as much as the governor is appointed by the president but not elected to the House as such the governor by no means is accountable to the Union Government and the President alone is his supervising authority to assess the performance of the governor and decide whether the governor should be removed.

Further, it may also be suggested that the constitution must incorporate a provision for the removal of the governor by impeachment as in the case of Supreme Court and High Court Judges so as to relieve the Governors from the fear of removal on political considerations at the whims and fancies of the government in power.

The president also may consider this important constitutional issue and refer the same to Supreme Court of India Article 143 of the Indian Constitution which affords guidance to the

¹⁴Press Reports of 'Enadu' daily news paper, dt. 23-01-1990

¹⁵ibid

¹⁶Article 156(1)&(3), Indian Constitution

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parliament to make necessary constitutional amendment and which alone ultimately ensures the independence of Governors office and strengthens the morale of the person the office¹⁷

Though the president has unquestionable power to remove the governor of the state such power must exercised by the president who sears to uphold the constitution , must form and independent and impartial opinion as to the removal of the governor, lest the doctrine of Pleasure contemplated in the constitution in this context turns out to be a camouflage under the Constitution victimising the incumbent on any ground outside the constitution.

¹⁷Article 143, Provides for Advisory Jurisdiction of the Supreme Court.