



FACULTY OF JURIDICAL SCIENCES

COURSE: B.A.LL.B. 1st Semester

SUBJECT: Political science-I

SUBJECT CODE: BAL-101

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Lecture-34



Judicial Powers:

In judicial matters Governor has some powers. He decides about postings, transfers and promotions of the district judges and other officers belonging to judicial service of the state. In the State High Court when a judge is going to be appointed, President consults the Governor of the state and in this way Governor has a hand in the appointment of judges of the High Courts.

Being the head of the Judiciary, Governor cannot be called to appear before any court for his actions, as long as he holds that office. He can pardon and reprieve or reduce the punishment of a person who has been adjudged guilty by any court in the state. He, however, cannot increase any such punishment.

He cannot grant pardon in cases involving death sentence or sentence pronounced by Court Martial. In the case of K.M. Nanavati Vs. State of Bombay the Supreme Court has held that Governor's power to suspend sentence was subject to rules made by that court.

The Court ruled that, **"The Governor cannot exercise his power of suspension of the sentence of the period when the Supreme Court is seized of the case After the filing of the petition and till the judicial process is over, the power of the Governor cannot be exercised."**

Miscellaneous and Discretionary Powers:

Governor is to ensure that accounts of the state are being maintained properly and the money is being spent for the purpose for which it has been allocated. For this purpose he receives and causes the Report of the Accountant General of the State placed on the Table of the House.

State Public Service Commission is an autonomous body. He receives report on the work of the Public Service Commission and sends the same to the State Council of Ministers for report and gets that placed before the Assembly for its approval.

In several matters he acts in his discretion such as selection of Chief Minister, dismissal of Ministry, dissolution of Legislative Assembly, assent to non-money bills; reserving a bill passed by the Legislative Assembly for the assent of the President and informing the President about failure of constitutional machinery in the state.

The Governor of Assam has discretionary powers in the administration of tribal areas of his state, whereas Governor of Nagaland can take steps in his discretion about checking violent activities of hostile Nagas. The validity of anything done in his discretion shall not be called in question on the ground that he ought or ought not have acted in his discretion.

He can issue ordinance when the legislature is not in session and can also seek the advice of the President on any important legislative matter.

But in this connection it may be pointed out that except in exceptional circumstances or in situation of political instability the Governor has no discretion. He remains a nominal head. In the words of Dr. Sharmu, **“The Governor is the constitutional head of the state just as the President is of the Union. We may say that he is President shorn of his emergency and transitional powers.”**

4. Governor and Dismissal of Ministry:

In November 1967, Governor of West Bengal Dharam Vira, got an impression that Chief Minister, Ajoy Mukerjee, had lost confidence of the House and the Chief Minister desired to convene Assembly meeting on December 18.

The Governor, however, wanted that the meeting should be called earlier, but when Chief Minister insisted on his date, the Governor in his discretion dismissed Ministry and invited Dr. P.C. Ghosh to form the Ministry and call session of the Assembly.

Accordingly when new Chief Minister called Assembly session on November 29, 1967, Speaker created constitutional crisis, by adjourning the House sine die. This created a lot of controversy and main issue that came to focus was whether Governor had any constitutional right to dismiss the Ministry, without ascertaining whether the Chief Minister enjoyed the confidence of the Assembly or not.

Article 164 of the constitution of course provides that the Minister shall hold office during the pleasure of the Governor but in the case of Sunil Kumar Bose and others Vs. The Chief Secretary of Government of West Bengal (1950), it was observed that, “The Governor under the present constitution cannot act except in accordance with the advice of his Minister ... The power to act in his discretion or in his individual judgment has been taken away.”

In this particular case, there were two main reasons which prompted the Governor to dismiss the Ministry:

(a) That the Chief Minister did not call for session of the Assembly on the date, on which the Governor desired it to be convened. This delay clearly meant that the Chief Minister was not in majority and was gaining time.

(b) It was not in the interest of a state and was constitutionally unjustified to continue a minority Ministry in power in the state.

As regards the date of convening the session of the Assembly, under the constitution what is provided is that interval between two sessions of Assembly should not be more

than 6 months. As long as this provision of the constitution is not violated, it is the responsibility of the Chief Minister to suggest a date on which Assembly session should be called.

Though technically Governor summons the Assembly, yet the date is decided by the state cabinet. Not only this, in this particular case the difference between the two dates suggested by the Governor and the Chief Minister was not much and could have been adjusted in the spirit of give and take.

As regard minority government it is, of course, correct that minority government should not continue and as soon as Chief Minister feels that he has lost confidence of the House he should resign.

It is not at all justified for the Governor to develop a subjective notion that the Chief Minister has lost confidence of the majority in the House and therefore; government should be dismissed. This can lead to serious consequences in a parliamentary form of government.

Not only this, but in India there have also several instances, when Governors allowed minority governments to remain in power. When C. Rajagopalachari was invited to form government in Madras, he was not in majority.

5. Governor and the Legislators:

Under the constitution presiding officer of a House is the custodian of rights and privileges of the members and he is supposed to maintain decorum in the House. In England, from where India has much borrowed as a parliamentary form of government, the members of Parliament have clearly understood that Queen is merely constitutional head of the state.

But in India there have been several instances when the legislators in the states did not allow Governor to proceed further, when he came to address a session of the House. But what assumed a great significance was in 1966 when Governor Hukam Singh was not allowed to proceed in the Rajasthan Assembly and he himself expelled 12 MLAs from the House.

This created a controversy; namely, whether Governor could expel an MLA from the House. Those who favoured this point were of the view that he was an integral part and the limb of the House and as such quite competent to do so. On the other hand those who criticised his action argued that maintaining decorum in the House was the responsibility of the Speaker and the Governor had nothing to do with that.

The controversy would have much developed and assumed constitutional significance, but in between fourth general elections came and secondly thereafter no other

Governor in any other state ever took a similar step as had been taken by the Governor in Rajasthan.

The point at issue, however, remains unresolved i.e., whether the Governor can at all expel an unruly M.L.A. from the House, when he comes to address the Assembly.

6. Governor and Criticism of Ministry:

Governor being nominal head of the state is not supposed to indulge in politics, much less use press and platform to vindicate his grievances and view point about his government. Of course, he has every right to write to President what he feels about his government.

In October 1973, Bihar Governor, D.R. Bhandare went to Nagpur and Bombay and there at those places he is alleged to have said in the open meetings that in his state Ministers and highly placed public servants were corrupt.

He is also stated to have said that in order to check corruption in the state, he had recommended to the President to dissolve state Assembly. These remarks of a Governor drew nation wide criticism and main point was whether a Governor had any right to publicly criticise his government. But after a few days when he came back to his state capital he openly denied, what had been reported in the press.

He said that he had no right to recommend dissolution of Assembly, when there was political stability. But the state government was not satisfied with this and demanded his recall. It was of the view that his continued remaining in the state was likely to effect smooth working of state administration.

Similarly in 19X9, Andhra Pradesh Governor Kumud Bahun Joshi also criticised some policies of the State Government which was highly resented by the latter and a demand was made for her recall.

7. Governor and Governor's Address:

It is constitutional obligation of the Governor to address every new session of the Assembly and budget session at its beginning. In this the Governor reads an address prepared by his government, which outlines its achievements and programmes of the future. It is, thus, a policy document which is prepared by the government and the Governor is not supposed to make any changes in that.

This practice has been borrowed from England where 'Address from the Throne' is prepared by the Prime Minister and read by the Queen.

Whatsoever is said in that; is accepted because in that country it is clear that it is a document of the government and if there is anything wrong in that, that should be the responsibility of the government, because Queen can do no wrong. Moreover, in England Queen has no discretionary powers.

But in India the position is different. Here the Governor has discretionary powers and it is this constitutional obligation to see that nothing is done in the state which strains the relations of the executive with the judiciary or conduct and behaviour of judges is unnecessarily attacked.

An interesting case, happened in West Bengal. Governor Dharm Vira advised the President that Ajoy Mukherjee Ministry in the state was not in a position to give a stable government and that it should be dismissed. On his advice the government was dismissed.

But the way in which this was done became a matter of controversy. When mid-term elections were held, Ajoy Mukerjee was again returned to power and the Ministry demanded that the Governor should be recalled.

The Governor himself even wanted that he should be transferred to some other state. But central government did not wish to leave an impression that the Governor was being called back on the advice of Chief Minister, because that could lead to several serious constitutional problems.

The refusal of the central government to recall the Governor very much annoyed West Bengal government. In between, Ajoy Mukerjee government moved the High Court about wrong dismissal of government by the Governor but the court did not accept government's view point, as in its opinion the Governor was the sole judge to decide about the dismissal of the Ministry.

In the address prepared for the Governor, Ajoy Mukerjee Ministry added two paragraphs in which dismissal of the Ministry by the Governor and the support given to him by the centre was condemned. This indirectly meant reflection on the central government as well as High Court.

The Governor suggested to the Chief Minister that these paragraphs should be omitted as these neither dealt with any policy statement nor indicated any achievement of the government. But Chief Minister insisted on their being read out.

In spite of the fact that controversy was going on the address when printed and laid on the Table of the House included those two paragraphs. When, however, Governor Dharam Vira read his address he omitted these.

This of course created a pendulum in the House, but raised a wider issue as to whether the Governor was in his constitutional rights to omit any portion of an address prepared

by the cabinet and whether he was duty bound to read that in to-to. The opinions were bound to differ.

Those who favoured the action of the Governor argued that he was justified because:

(a) Omitted portion did not deal with any policy statement or achievement of the government and as such it was not obligatory on his part to read that.

(b) He himself had dismissed the government and his decision had been upheld by the court. Reading these paragraphs would have cast indirect reflection on the judiciary. It was the responsibility of the Governor to see that there was no unnecessary reflection on the judiciary.

(c) In these paragraphs central government had been adversely criticised. How could a Governor condemn the central government which had acted on his advice and was not in the House to defend itself.

But on the other hand the supporters of government action felt that the Governor was constitutional head of the state and it was his constitutional duty to read a prepared address. If there was anything wrong the government would have been condemned on the floor of the House and taken to task for including in the address unnecessary references.

But the controversy did not Hare up because after some time the Governor was recalled and thereafter, in no other state such a situation arose.

8. Governor's Address and Affrontation:

Though in India it is quite well known that Governor is constitutional head of die slate and he has practically nothing to do either with policy making or formulation and that affrontation to his authority has no meaning, yet on several occasions, the opposition parties have used the occasion of his addressing the House, to express their grievances. The opposition several times has boycotted his address on one pretext or the other.

In the Punjab Vidhan Sabha 16 opposition Members walked out of the House to join a procession outside the House, as Governor Ujjagar Singh began his speech to inaugurate budget session of state legislature.

In 1969, except one SSP member, the entire opposition boycotted the Governor address of the state legislature as a protest against alleged installing of a puppet Ministry by the Governor in the state and that too in an illegal and unconstitutional manner.

In West Bengal in 1969, Governor Dharam Vira could address the House after great physical strain and some of the members even blockaded the way from which he was to walk in to address the House. As already said Governor Hukam Singh had to suspend 12 MLAs in Rajasthan Legislative Assembly who did not allow him to proceed with his address.

In Maharashtra Governor had to call Marshal to take one MLA (Mr. Dhote) out of the House for his shouting in the House and not allowing him proceed with his address. In fact, in India there is no state in which Governor's address was either not boycotted or not disturbed.

In January, 1990 addresses Governors of Tamil Nadu, U.P. and M.P. were disturbed on the plea that since they had resigned they had no right to address the Assembly.

9. Governor's Committee:

Governors who were supposed to be constitutional heads in some cases began to act in a manner which invited wide spread criticism. Their actions about summoning, proroguing and dissolving Assemblies, as well as some of their actions received wide spread criticism, particularly by non-Congress opposition parties.

They demanded that a code of conduct should be evolved and guidelines issued to the Governor on such important matters. It was, however, felt that issuing written guidelines would be a difficult, and perhaps not a practical solutions to the problem, because the Governors had to act under different situations and circumstances.

When Governors, however, met for their annual conference in 1970, President V. V. Giri decided to set up a Committee of five Governors, headed by Kashmir Governor, Bhagwan Sahey, to study the provisions of the constitution and to recommend whether it was possible to lay down some guidelines to deal with the problems which faced Governor in their dealings with the cabinet, legislature and in the use of his discretionary powers.

The Committee interviewed several people and submitted its reports in October, 1971. It was of the view that it was difficult to lay down any guidelines and, in fact, laying down such guidelines was unconstitutional.

There was no authority in the constitution which could lay down such guidelines. Much will depend on the spirit of give and take and degree of political discipline which was bound to develop with the passage of time.

The Committee was of the view that if a Chief Minister avoided facing the Assembly at the earliest, it was clear indication of the fact that he had lost confidence of the House and the Governor was very much justified in dismissing such a Ministry. Another

suggestion of the Committee was that a Governor should invite only such person as Chief Minister who was a member of the legislature.

No outsider should ordinarily be invited to head the government. In case any such person was invited he should get himself elected to either House at the earliest.

The Committee viewed with concern that some Chief Ministers, after their swearing in ceremony postponed the formation of Council of Ministers. It was of the view that this tendency should be discouraged and Ministers should be appointed as early as possible, after swearing-in of the Chief Minister.

If a Governor doubted majority strength of the Chief Minister, then Assembly session should be called at the earliest possible opportunity so that majority claim of the Chief Minister is tested.

Then another recommendation of the Committee was that if certain Ministers in a coalition Ministry belonging to a particular party or group resigned due to disagreement with the Chief Minister, then the latter need not resign.

If, however, doubts were raised about majority support of Chief Minister's party or parties it was obligatory on the part of the Chief Minister to establish beyond doubt his strength in the Assembly and that too at the earliest possible opportunity.

Constitutionally the Governor was bound to accept the advice of Chief Minister. But in case he felt that a particular action was unjustified, he should record that, indicating the nature of his objections.

The Committee also said that, **"It is clear that he cannot break up the coalition by seeking to dismiss the Ministers representing the partnership and yet claim to remain in office himself."**

The Committee was also of the view that in order to assist the Governors in evolving healthy conventions with respect to all these issues a special wing in President secretariat may be set up to collect and make available all authentic information regarding political and constitutional development in all the states from time to time.

The Governor is the head of the state, and has certain constitutional obligations to discharge. It is, therefore, wrong to think and believe that he is merely agent of the President at the Centre. He has several obligations towards his state as well.

It is not possible to ban defections legally, because that is likely to offend some provisions of the constitution.

These recommendations of the Committee were placed before the annual conference of the Governors held in November, 1971. The conference appreciated the

recommendations but was of the view that it was not possible to lay down any guidelines.

It was not possible, firstly, because written guidelines could come in conflict with the provisions of the constitution and secondly, it was difficult to anticipate all eventualities and situations in which Governor was required to function.

In November 1973, President V.V. Giri, while addressing the conference of Governors, again pointed out that in their relationship with the Council of Minister, they were required to work in a certain anonymity and should not openly criticise their governments.

He said that the Governor and the Council of Ministers do not function in competition with each other and that press and platform is not the forum for Governors for ventilating grievances. When a state is placed under President's rule, the Governor is not running a care taker government, but he is to see that state machinery remains in 'tact' and Governor is responsible for its efficient running.

He pointed out that conventions, of course, have their own place in India but reliance on conventions without regard to totality of circumstances in a given case may not only be irrelevant but also misleading. He suggested the Governors that they should remain away from political parties clashes.

10. Suggestions for the Future:

Under the constitution, the Governor is required to function as an independent personality in the state in which he is posted. He is not merely an agent of the Centre. But with the passage of time, an impression has gained ground that he is the representative of Centre in the state and sure to work in the manner he will be required to do so by the Centre. This impression need be removed at the earliest.

Then another impression is that it is a sinecure job which is given to someone as a favour by the Centre, particularly to those who have ceased to be active in life and are to be accommodated. Again this impression should be wiped out.

On the other hand an impression should be created that Governor has been carefully selected purely on merits and is the most suited one to deal with complicated affairs of public life and can judiciously hold a balance between national and regional interests. He should inspire confidence of all political parties in the state with his conduct and behaviour.

He should avoid taking rash and drastic steps and behave in a manner that his impartiality is never in doubt. As far as possible he should take decisions on the spot so

that there is no impression that he is acting under the guidance of central government only.

A Governor should not create an impression that he is acting parallel to his Council of Ministers or is a court of appeal against the decisions of his government.

While making an appointment the centre should see that a Governor is a person of unquestionable integrity, honesty and that he has distinguished himself in life, so that he is listened with care in the state.

No active politician with clear political affiliations should be appointed as Governor, because such a person cannot inspire trust and confidence of other political parties. Not only this, but he spends a lot of his time in the politics of state of his interest. It will be better, if educationists, scientists, etc., who have long administrative experience are appointed as Governors.

As far as possible, before making an appointment of a person as Governor, state concerned should be consulted and its view point appreciated. This will leave an impression that the Governor is not being imposed on the state.

It should be laid down as a service condition that after their retirement the Governors shall not take part in active politics, so that they can act in a detached manner.

Dr. A. K. Sen, former Union Law Minister opined that, "In order to give true meaning to the office of the Governor, the first essential thing is to choose proper person for filling the high office. It should not be treated as a last refuge of a retired politician, or a civil servant, or as a place for the distribution of patronage. Outstanding men in the political, social or educational life of country, who are not controversial figures must obviously be the proper choice."

Unless person of sterling qualities and integrity without political biases and ambitions and expectations for the future career are appointed as Governor, controversy about their actions is bound to be there and opposition parties are likely to feel that the head of the state is not looking after their interests, but only those of the ruling party at the Centre. Their conduct and behaviour will continue to be questioned.

Council of Ministers and the Parliament India

In this article we will discuss about the relationship between the council of ministers and the parliament.

The Council of Ministers has very close relationship with the Parliament. Each of its member must be a member of either house of Parliament. He can remain a Minister, without his being a member of either House of Parliament, only for a maximum period of 6 months. Within this period he must become a member of the either House, failing which he will have to quit ministerial job.

There have been instances when a Minister had to quit his position, simply because he could not become a member of the either House of Parliament. In case the Prime Minister finds that due to one reason or the other it is not possible to get him elected, to the Lok Sabha he can be nominated to the Rajya Sabha.

Thus, each member of the Council of Ministers, being a member of the either House of Parliament, actively participates in the proceeding of the Parliament.

He is responsible for defending the policies of the government in general and his Ministry in particular. He cannot take shelter on the plea that he has been misguided by civil servants of his Ministry. He also cannot criticise his civil servants on the floor of the House, because they are not there to defend themselves.

As active members of the House the Ministers are required to pilot all legislative financial administrative and other measures. No Minister can take the plea that a particular measure could not be taken because there was no legislative authority behind that. It is the responsibility of the Minister to get the Bill piloted by him passed and see that the work of his department runs smoothly.

The Parliament in turn controls the Council of Ministers in several ways. It checks its activities by putting questions, rejecting the Bills initiated by the Minister, by way of moving adjournment motions and ultimately by moving a vote of no-confidence against the Government.

In the history of Indian Parliament several times votes of no-confidence have been moved against "the Council of Ministers, but it was only in 1979 that for the first time such a motion was carried out.

This time the motion was moved by the leader of the opposition Y.B. Chavan and due to political defections in the Janata Party, the then Prime Minister Morarji Desai resigned from his office.

A motion of vote of no confidence against the Council of Ministers, however, in effect means, exposing the weaknesses of the Government in the House for the consumption of the electorates, because as long as the party enjoys the majority and is solidly behind the government, moving of such a motion is a ritual and a routine exercise.

It also provides an opportunity to the government to defend its policies and programmes. But a vote of no-confidence against the Government can also have its own repercussions, because if the Government feels that it is likely to be defeated on the floor of the Lok Sabha, then instead of resigning, it may request the President to dissolve the House.

This is what happened in 1979, when the then Prime Minister Choudhary Charan Singh, knowing that Congress (I) had withdrawn its support from the government and that was

not likely to survive, he not only himself resigned, but also advised the President to dissolve the House.

As is well known that whereas every general election puts heavy economic burden on the country, many members of the dissolved House may not get re-elected.

In 1979, when the House was dissolved, Lok Dal and Congress (U) were in power at the centre. Immediately before that Janata Party was in power. But in 1980, when elections were again held, many stalwarts of these parties could not get themselves elected and their constituencies returned Congress (I) candidates.

Dissolution of the House has also assumed greater significance, because those members of the House who complete 5 years as a member of Parliament are entitled to get some pension for their whole life.

In case the House is dissolved earlier than this period, which is normal life of the Lok Sabha, then the members lose their pensionary benefits as well, which is no less a loss, for any member of Parliament, because that is for the whole life.

But in its relation with the Parliament, the executive need fear only when the party is indisciplined or when some of the factions or groups in the party try to be indisciplined. As long as the party is disciplined, it need not fear from the House. This fear has become less since the passing of Anti-Defection Act.

Any defection from political party on whose ticket one was elected to the House entails disqualifications from the membership of the House. It also means set back to political career which many parliamentarians do not like or cannot afford.

1. Which of the following characteristics is not related to the Presidential System?

- (A) Governance of the Prime Minister
- (B) Single Executive
- (C) Single Membership
- (D) Dissolution of lower house is banned

2. Which of the following characteristics is not related to the federal government?

- (A) Written Constitution
- (B) Flexible Constitution
- (C) Supremacy of the Constitution
- (D) Independent Judiciary

3. In the Federal Government.....

- (A) All the powers and functions are vested in the Central Government and Regional Government.
- (B) All powers are divided into Central Government and Regional Government
- (C) Both A and B
- (D) None of the above

4. The Federal System in India is based on the model of which country?

- (A) Canada
- (B) UK
- (C) America
- (D) Japan

5. Which of the following statements is wrong?

- (A) Lok Sabha represents the people of India.
- (B) The Rajya Sabha represents the states.
- (C) There are only 98 topics in the center list at this time.
- (D) Rajya Sabha protects the state with unnecessary interference from the Center