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## **4. Tussle between Constitutional Powers of Chief Minister and Governor**

**Prelims Syllabus:** State Legislature

**Mains Syllabus:** GS-II Parliament and State Legislatures - structure, functioning, conduct of Business, Powers & Privileges and Issues Arising out of these.

### **Why in News?**

- Tensions between West Bengal Chief Minister Mamata Banerjee and Governor Jagdeep Dhankhar reached a flashpoint, after the CM's accusation of the Governor over violating the constitutional powers.

### **What are the Powers of the Governor?**

- The Governor's appointment, his powers and everything related to the office of Governor have been discussed under Article 153 to Article 162 of the Indian Constitution.
- The role of the Governor is quite similar to that of the President of India. The Governor performs the same duties as of President, but for the State. Governor stands as executive head of a State and the working remains the same as of the office of President of India. Under the Constitution of India, the governing machinery is the same as that of the Central Government.
- It is stated that the Governor has a dual role.
- He is the constitutional head of the state, bound by the advice of his council of ministers.
- He functions as a vital link between the Union Government and the State Government.
- The term of governor's office is normally 5 years but it can be terminated earlier by:
  - Dismissal by the president on the advice of the council of minister headed by the prime minister of the country.
  - Dismissal of governors without a valid reason is not permitted. However, it is the duty of the President to dismiss a governor whose acts are upheld by courts as unconstitutional and malafide.
- Resignation by the Governor.

### **What are the Issues?**

- There are numerous examples of the Governor's position being abused, usually at the behest of the ruling party at the Centre. The process of appointment has generally been the cause behind it.
- In several cases, politicians and former bureaucrats identifying with a particular political ideology have been appointed as the Governors by the Governments. This goes against the

constitutionally mandated neutral seat and has resulted in bias, as appears to have happened in Karnataka, Goa and now in West Bengal.

- A year before, the Governor of Rajasthan was charged with the violation of the model code of conduct. His support of the ruling party is against the spirit of non-partisanship that is expected from the person sitting on constitutional posts.
  - ✓ Due to such incidents, negative terms like an agent of the Centre, Puppet and rubber stamps are used to describe a governor of the state.
- Governor's discretionary powers to invite the leader of the largest party/alliance, post-election, to form the government has often been misused to favour a particular political party.
- The Governors Committee (1971) laid down the responsibility on the governor to see that the administration of the State does not breakdown due to political instability and he must send a regular report about the political situation of the State.
  - ✓ However, the imposition of President's rule (Article 356) in case of breakdown of constitutional machinery in a State has been frequently misused by the central government.
- Governor's work is bound by the aid and advice of his council of ministers; this has brought down the significance of the office to a mere rubber stamp.
  - ✓ This is reflected in TB. Pattabhi Sitaramayya (a former Governor of Madhya Pradesh) observation that he had no public function to perform except making the fortnightly report to the President.
- The arbitrary removal of the Governor before the expiration of his tenure has also been an important issue in the recent past.
  - ✓ The Governor cannot be removed on the ground that he is out of sync with the policies and ideologies of the Union government or the party in power at the Centre. Nor can he be removed on the ground that the Union government has lost confidence in him.

### **What did S.R. Bommai Judgement Said?**

- In **S.R. Bommai case** (1994), following the **Sarkaria Commission's recommendations**, the Supreme Court underlined that the breakdown of constitutional machinery implied a virtual impossibility, and not a mere difficulty, in carrying out governance in a State.

- SC said that while the subjective satisfaction of the President regarding such a breakdown was beyond judicial scrutiny, the material on which such satisfaction was based could certainly be analysed by the judiciary, including the Governor's report.
- The Court reinstated the governments in Arunachal Pradesh and Uttarakhand which were suspended after the arbitrary imposition of the President's Rule.
- The Supreme Court classified the instances of failure of constitutional machinery into four heads:
  1. Political crises.
  2. Internal subversion.
  3. Physical breakdown.
  4. Non-compliance with constitutional directions of the Union Executive.

#### **Other Cases and Recommendation:**

- The Supreme Court in the **Nabam Rebia judgment** (2016) ruled that the exercise of Governor's discretion Article 163 is limited and his choice of action should not be arbitrary or fanciful. It must be a choice dictated by reason, actuated by good faith and tempered by caution.
- The **Administrative Reforms Commission (1968)** recommended that the report of the governor regarding the president's rule has to be objective and also the governor should exercise his own judgment in this regard.
- The **Rajamannar Committee (1971)** recommended the deletion of Articles 356 and 357 from the constitution of India. The necessary provisions for safeguards against arbitrary action of the ruling party at the Centre under Article 356 should be incorporated in the constitution.
- The **Rajamannar Committee** emphasised that the governor of the state should not consider himself as an agent of the centre but play his role as the constitutional head of the State.
- The **Sarkaria Commission (1988)** recommended that Article 356 should be used in very rare cases when it becomes unavoidable to restore the breakdown of constitutional machinery in the State.
- The commission recommended that before taking action under Article 356, a warning should be issued to the state government that it is not functioning according to the constitution.

- "**Justice V. Chelliah Commission**" (2002) recommended that Article 356 must be used sparingly and only as a remedy of the last resort after exhausting all actions under Articles 256, 257 and 355.
- The "**Punchhi commission**" recommended that this Articles 355 & 356 be amended. It sought to protect the interests of the States by trying to curb their misuse by the Centre.

### Way Forward:

- For the smooth Functioning of a democratic government, it is equally important that the governor must act judiciously, impartially and efficiently while exercising his discretion and personal judgment.
- In the current political climate examples being Goa (2017), Meghalaya (2018), Manipur (2017) and Karnataka (2018), point to the need to ensure proper checks and balances to streamline the functioning of this office.
- In order to enable the Governor to Successfully discharge his functions under the constitution, an agreed '**Code of Conduct**' approved by the state governments, the central government, the parliament, and the state legislatures should be evolved.
- 'Code of Conduct' should lay down certain 'norms and principles' which should guide the exercise of the governor's 'discretion' and his powers which he is entitled to use and exercise on his personal judgment.
- The 'procedure for appointment of governors should be clearly laid down' and conditions of appointment must also be laid down and must assure a fixed tenure for the governor so that the Governor is not under the constant threat of removal by the central government.
- It is necessary to invest the office of the Governor with the requisite independence of action and to rid them of the bane of 'instructions' from the Central Government.
- It is suggested that the exercise of 'discretionary powers' by the Governors should be 'guided by the healthy and democratic conventions'.
- The Bommai verdict allows the Supreme Court to investigate claims of malafide in the Governor's report; a similar extension to cover malafide in the invitation process could be a potential solution.
- The role of governor is indispensable for the successful working of the constitutional democracy. He must refrain from aligning himself to any political ideology. The virtue of impartiality must be withheld to ensure a free and fair election in a democracy.