

Some Raj Bhavans are on the war Path

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The Governor must be mindful of being a friend and a guide to his government, more so in Opposition-ruled States.

Recent media reports about the confrontation between the Governors and the State governments, in Maharashtra and Kerala, have turned the spotlight on the rather delicate relationship between the constitutional head of the State and the elected government. In Maharashtra, for example, the situation was indeed bizarre insomuch as the Governor refusing to accept the date of election of the Speaker recommended by the State government. Consequently, the Assembly could not elect the Speaker.

The situation in Kerala has been no less bizarre. The State Governor having reappointed the Vice Chancellor of Kannur University in accordance with the law, made an allegation against the Kerala government that he was under pressure from the Government to reappoint the Vice Chancellor. The Governor confessed that he had done the wrong thing by yielding to governmental pressure. He has added that he does not want to remain the Chancellor any more, though he holds this position in an ex-officio capacity which means that he would have to remain the Chancellor as long as he is the Governor. But the Governor remains adamant.

The Governor levelling allegations against his own government is not a first-time development. In West Bengal this has been a regular feature. Similarly, non-acceptance of the advice of the Council of Ministers too has been witnessed in Rajasthan as well as Maharashtra again. Of course, there have been differences between Governors and Chief Ministers in the past too, but these have been rare occurrences. But the open confrontations now clearly cross the boundaries of what is constitutionally permissible behaviour.

With discretionary powers

The relationship between the Governor and Chief Minister has, even at the best of times, not been absolutely simple and tension free. It has something to do with the whole idea of the office of the Governor and its past history. In the colonial era, the Governor was the absolute ruler of the province who was answerable ultimately to His Majesty, the King. A closer look at the debates in the Constituent Assembly on the Governor would reveal that there were divergent views on the powers to be given to the Governor.

In fact, there were members in the Assembly who wanted the Governor to be as powerful as the colonial-era Governors. Though B.R. Ambedkar was clear that the Governor should only be a constitutional head and the executive power should vest entirely in the elected government, he promoted the idea of vesting certain discretionary powers in the Governor. In this respect he was guided by the thinking that the State governments are in subordination to the Union government and, therefore, the Governor should be given discretionary powers to ensure that they act so.

So, ultimately, the Governor who emerged from the Constituent Assembly was one with certain discretionary powers prescribed by or under the Constitution unlike the President of India who has not been given any such powers. Further, Article 163 (Article 143 in the draft Constitution) became a 'blind reproduction of Section 50 of the Government of India Act 1935' (H.V. Kamath). This exact reproduction of the provision in the Act of 1935 has, to a great extent, introduced a vagueness about the actual powers of the Governor vis-à-vis the elected government in democratic India which was corrected only with the Supreme Court of India stating the law in unambiguous terms in *Shamsher Singh* (1974). From *Shamsher Singh* to *Nabam Rebia* (2016) the top court declared that the Governor can, in the exercise of executive power of the state, act only on the aid and advice of the Council of Ministers "...save in a few well-known exceptional situations".

The Maharashtra case

The Maharashtra Governor's refusal to accept the date of election of the Speaker goes against the principles of constitutional government. It must be stated here that the Constitution has not assigned any role to the Governor in the election of the Speaker under Article 178, which is exclusively the job of the House. It is only the House rule which says that the Governor shall fix the date. The date as such has no great significance. Under the procedure followed in all Assemblies, the government fixes the date and conveys it to the Secretary of the Assembly who forwards it to the office of the Governor for his signature. After the date is formally approved by the Governor — which he is duty bound to do — the members are informed about it.

Now the question is if the Governor does not approve the date, can the election be held? Fixing the date by the Governor is not of any constitutional importance; election by the House is the important thing. So, if the Governor stands in the way of the election, the only way open to the House is to amend that particular rule which empowers the Governor to fix the date. It can provide that the Secretary on receiving the date from the government shall notify the members of the same. The election can be held either through secret ballot or through a motion in the House as is done by the Lok Sabha. But it must be said that it could be for the first time in the history of free India that a Governor has refused to fix the date of election of the Speaker and, consequently, the election could not be held. The Maharashtra Assembly is now without a Speaker being in office.

In Kerala

The Kerala situation is even more curious. There, the controversy surrounds the reappointment of the incumbent Vice Chancellor of Kannur University. There was a suggestion from the State government routed through the Pro Chancellor who is the Minister for Higher Education for the reappointment of the incumbent Vice Chancellor. The Governor being the ex-officio Chancellor of the university and the appointing authority, accepted the suggestion and reappointed him. After some time, the Governor went public with a serious allegation that he had signed the order of appointment under pressure from the Government and that he had done the wrong thing by reappointing the Vice Chancellor under pressure.

It must be stated here that the Governor had acted perfectly in accordance with the law in reappointing the incumbent Vice Chancellor. Under the University Act, an incumbent Vice Chancellor is eligible for reappointment. Since the Act does not lay down any specific procedure for reappointment, the Chancellor was right in accepting the suggestion or the recommendation made from the Government. In fact, he or she can accept suggestions from any person including the Leader of the Opposition in the Assembly. The point worth noting here is that the Governor as Chancellor is not required to act on the advice of the Council of Ministers in the matter of appointment of Vice Chancellor and others in the university. He can act absolutely independently. He could also have rejected the suggestion from the Government.

The Kerala High Court has clarified this legal point in *Gopalakrishnan vs Chancellor, University of Kerala*. So the Governor of Kerala needs to apply his mind independently to the case of reappointment, evaluate the performance of the Vice Chancellor and fully satisfy himself about the merit of the appointee before signing the appointment order. It is presumed that he had done this. Therefore, it is baffling why he chose to go public and level serious allegations against the Government and incriminate himself in the process. Adding to the confusion, the Governor has divested himself

of the ex-officio charge of Chancellor and declared that he will not be functioning as Chancellor. Needless to say, one cannot relinquish a charge which he holds in an ex-officio capacity unless he leaves his substantive post.

Detachment is the essence

These are very bizarre situations indeed. The Governor is a high constitutional authority. He needs to function within the four walls of the Constitution and be a friend, philosopher and guide to his government. The Constitution does not allow him to be a parallel government; nor does it make him personally responsible for his actions as Governor. That such confrontations take place only in Opposition-ruled States shows that political expediency has overtaken constitutional propriety. Wading through the Constituent Assembly debates, one comes across these wise words of Pandit Thakur Das Bhargava, a conscientious member of the Assembly: “He (Governor) will be a man above party and he will look at the minister and government from a detached stand point”. Detachment is the essence of India’s ancient culture. But Pandit Thakur Das’s voice has ended up as a voice in the wilderness.

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Expected Question (Prelims Exams)

- Q. For which of the following appointments the Governor can act independently?**
- (a) Vice-Chancellor
 - (b) Speaker of the Assembly
 - (c) Minister
 - (d) None of the above

Expected Question (Mains Exams)

- Q. "Over the past several years, the role of political master being played by the governors in the state governments of the opposition parties more than their constitutional obligation, which has seen conflicts in union-state relations." In such a situation, is there any need for any kind of constitutional amendment regarding the post of Governor? make a comment.**

(250 Words)

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Note: - The question of the main examination given for practice is designed keeping in mind the upcoming UPSC main examination. Therefore, to get an answer to this question, you can take the help of this source as well as other sources related to this topic.