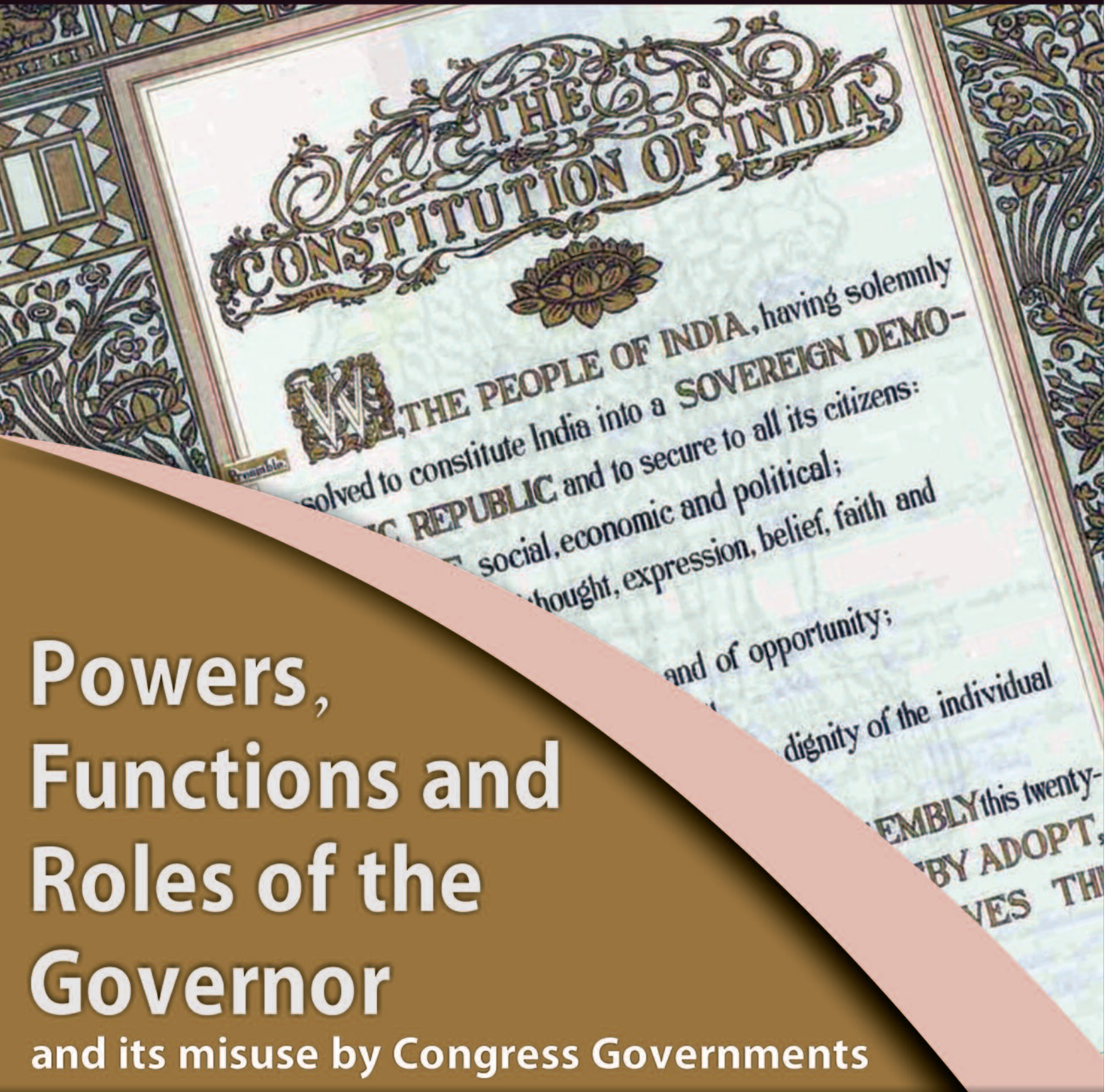




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# **Powers, Functions and Roles of the Governor**

**and its misuse by Congress Governments**

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# Powers, Functions and Roles of the Governor

**T**he post of governor of a state is of immense importance in our political system. It is considered as one of the pivotal parts of “checks and balances” that our democracy is proud of. Powers and functions bestowed upon the governors and lieutenant-governors of the states and union territories of India are similar in nature to that of the President of India at Union level. Being de jure head of the state government, all its executive actions are taken in the governor's name. While the President of India is ‘elected’, the governor is ‘selected’ by the existing central government via imperative processes.

## A look at the history of the origin of the office of Governor in India

- The origin of the office of the Governor in India, as we know it today, can be traced to the advent of the “East India Company” to India. The word “Governor” is historically also associated to the Portuguese “Afonso de Albuquerque” who held the position of Governor and Captain General in India in the year 1509.

- Further, with the issuance of the charter of 1601 by Queen Elizabeth –I, Governor was bestowed with the legislative powers to make, ordain and constitute such laws, orders and ordinances as required for the Governance of the East India Company.

- With the transfer of power from the East India Company to the British Crown through the Government of India Act, 1858 as enacted by the British Parliament, the Governor

General of India was granted the power to issue ordinances and veto any Bill. The overriding powers of the Governor General of India with respect to legislature continued even after the enactment of the Government of India Act, 1935, which provided for a provincial executive consisting of the Governor and Council of Ministers to advise him.

- The Governor of a province was provided with 3 types of powers:

1. Discretionary
2. Powers exercised in his individual judgment and
3. Powers to be exercised on the advice of the Ministers

- With the enactment of the Indian Independence Act, 1947, India was divided into two independent dominions. Both the two Dominions were to have a Governor General each who was to be appointed by the King of England as his representative.

- Originally, the Provincial Constitution Committee of the Constituent assembly had recommended that the governor should be directly elected by the people of the state. The proposal of an elected governor was criticized on the ground that the presence of two persons in the government namely the Governor and the chief minister, each deriving his mandate from the people, might lead to friction.

- While the Constitution was being framed and discussed upon, Sardar Patel sought

to make it explicit that “special powers” endowed upon the Governor would not create dissonance between him and the ministry. He stressed that there would be no “invasion of the field of ministerial responsibility”. The “special powers” would primarily be limited to sending a report to the Union President when “a grave emergency arose, threatening menace to peace and tranquillity”. At one point there was also an argument put forward that the governor should be elected directly by the people of that province, but it did not find assent. Jawaharlal Nehru had emphasized that this post could be utilized to bring distinguished people from eclectic backgrounds as well as academics into the field of public service, as they might not have necessary expertise or zest for winning an election.

### **Role, Functions and Powers of the Governor as enshrined in the Constitution of India**

- As provided by Articles 155 and 156 of the existing Constitution of India, Governors of the States are appointed by the President of India and are answerable to him and hold their offices during the pleasure of the President of India

- The Governor, thus, is an appointee of the Central Government in the State, and, in so far as he acts in his discretion, he shall be answerable to the Union Government.

- Except in matters in which the Governor is required by or under the Constitution to exercise his function in his discretion, the Governor is the Constitutional or formal head of the State and he exercises all his powers and functions on the aid and advice of his council of Ministers. This is so because our Constitution embodies generally the Parliamentary or Cabinet system of Government of the British Model both at the Union and the

States

- Article 164(1) of the Constitution of India empowers the Governor to appoint the Chief Minister. However, like the discretion of the president in the appointment of the Prime Minister, the Governor’s discretion in the appointment of Chief Minister is conditioned by an essential form of Parliamentary form of Government that the Council of Ministers shall be collectively responsible to the State legislative assembly. This means that the leader of a party which commands majority in the legislative assembly is eligible for appointment as Chief Minister, and the Governor is bound to request him to form the Government. If there is no party commanding a clear majority in the legislative assembly, the Governor may exercise his discretion in the appointment of Chief Minister according to his personal assessment of the situation at that time.

- Article 72 of the Constitution of India could be reconciled with Article 161 by limiting the power of the Governor to grant pardons to cases not covered by Article 72. If so read, the President alone has the exclusive powers to grant pardons, reprieves, and respites in all cases where the sentence is a sentence of death and both the President and the Governor have concurrent powers in respect of Pardon, Suspension, remission and commutation of a sentence other than that of death. In other matters, that is in respect of offences against any law relating to a matter to which the executive power of the State extends, the Governor has all the powers enumerated in Article 161 of the Constitution of India including the power to grant pardons, reprieves and respites.

- To put it briefly, the Power of Governor to grant pardons, reprieves and respites in all cases where the sentence is not a sentence of death, and to suspend, remit or commute the sentence of any person, is co – extensive with

the executive power of the State. It, therefore, follows that the Governor has the power to grant a pardon or remit the sentence of a person who is transported for life.

- In a 5 Judge Bench, the Supreme Court of India has held in *BP Singhal v. Union of India* ((2010) 6 SCC 331) that the role of the Governor of a State is to function as a vital link or bridge between the Union Government and the State Government. He is required to discharge the functions relate to his different roles harmoniously, assessing the scope and ambit of each role properly.

- A Governor of a State has dual role. The first is that of a Constitutional head of the State bound by the advice of his Council of Ministers. The second is to function as vital link between the Union Government and the State Government. In certain special or emergent situations, he may also act as a special representative of the Union Government.

- The Governor of a State is neither an employee of the Union Government nor the agent of the party in power nor required to act under the dictates of political parties. His office is not subordinate or subservient to the Government of India.

- He is constitutionally the head of the State in whom is vested the executive power of the State and without whose assent there can be no legislation in exercise of the legislative power of the State. The fact that the Governor holds office during the pleasure of the President does not make the Government of India an employer of the Governor.

- There is a distinction between the powers of the President under Article 74 and the Governor under Article 163 of the Constitution. There is some qualitative difference between the position of the President and the Governor. The President under Article 74 has no discretionary

powers but the Governor has certain discretionary powers under Article 163(2) of the Constitution of India.

- In contrast to Article 74, even though Article 163 similarly provides that the Governor of a State is to exercise his functions in consonance with the aid and advice tendered to him by the council of Ministers with the Chief Minister as the head, yet Article 163(2) confers discretionary powers with the Governor when it is so expressly mandated by or under the Constitution.

- To a limited extent Article 163(2) authorizes Governor to act in his own discretion and in that sense there is a clear distinction between the power vested in the President and the power vested in the Governor.

- Governor should act as per the will or advice of the majority party only when the same is in accord with the Constitution and the laws. (*B.R. Kapur v. State of T.N. & Another* (2001 7 SCC 231))

## Powers and functions of the Governor

The Governor of the State, like the President, is entitled to specific powers. They are-

- Legislative – affiliated with ordinance-making and State Legislature;
- Executive – affiliated with administrative appointments and discharge;
- Judicial – affiliated with power to grant pardons and respites;
- Financial – authority over the state budget and money bills;
- Discretionary – to be exercised at the discretion of the Governor;

to, as stipulated under Article 159, preserve,

protect and defend the Constitution and the law. Unlike the President, however, the Governor does not possess any diplomatic or military powers.

### **Executive powers**

- As per Article 154, the Constitution states that the executive power of the State shall be vested in the Governor who can exercise them through directly or indirectly through subordinate officers

- The State Government undertakes all executive action in the name of the Governor

- As per Article 164, the Governor has the power to appoint the Chief Minister of the State, and upon the Chief Minister's recommendation, the appointment of other ministers.

- The Governor appoints the Advocate General of the State, State Election Commissioners and the chairman and members of the State Public Service Commission. However, the Governor cannot remove the members of the State Public Service Commission as they can only be removed by an order of the President.

- In States with bicameral legislature, the Governor can further nominate to the Legislative Council persons with special knowledge or practical experience in matters of literature, art, science, cooperative movement and social service.

### **Legislative Powers**

- The Governor can summon, prorogue, defer or dissolve the State Legislative Assembly, his decisions often taken in counsel with the Chief Minister and the Council of Ministers.

- The Governor has the power to nominate 1/6th of the State Legislative Council.

- The Governor can nominate a member

of the Anglo-Indian community to the Legislative Assembly of the State, should he feel the community is under-represented in Vidhan Sabha.

- As per Article 200, the Constitution confers the Governor with the power to assent, withhold assent, return for reconsideration, or reserve for President's consideration any Bill. But should the Vidhan Sabha send back a returned Bill to the Governor the second time, then he has to sign it.

- As per Article 213 the Constitution of India confers the Governor the power to promulgate an ordinance when the Legislative Assembly of the State is not in session. Notwithstanding the immediate effect of the law, it must be presented in the next session in the State Legislature, and unless approved, remains active for a six-week period.

- The Governor lays reports of State Finance Commission, State Public Service Commission and Comptroller and Auditor-General relating to the account of the State in the Legislative Assembly.

- The Governor inaugurates the State Legislature, outlining new administrative policies of ruling government at the first session every year.

### **Financial Powers**

- The Governor constitutes the Finance Commission to oversee financial positions of Panchayats and Municipalities, and, in the case of any unforeseen circumstances, holds the power to make advances out of the State Contingency Fund

- A prior recommendation of the Governor is necessary before the introduction of any Money Bills or Demands for Grant

- The Governor ensures that the annual

financial statement or State Budget is laid before the State Legislature

### ***Judicial Powers***

- As per Article 161, the Governor can grant pardons, reprieves, respites or remission of punishments, or suspensions, remittances or commutes of sentences of those convicted of an offence to which the executive power of the State extends
- The Governor is consulted by the President, as well as the Chief Justice of India, in the appointment of the Chief Justice to the High Court, judges of the High and District Courts, their postings and promotions.

### ***Discretionary Powers***

- The Governor may recommend an imposition of the President's Rule on the President's behalf, and in such circumstances, override the Council of Ministers and directly handle the workings of the State.
- The Governor may exercise his function as the administrator of adjoining Union Territory
- The Governor holds the power to select the Chief Minister should no political party win a majority in the Vidhan Sabha of the state, or in the Chief Minister's demise without any obvious successor

# Misuse of the Office of the Governor at the behest of Congress Governments

**A**rticle 155 of the Constitution of India warrants the President of India to designate the Governor of a State under his hand and seal and Article 156 provides that he shall hold office during the pleasure of the President. There have been few occasions over the past 65 years when Governors undermined the people's mandate, leading to misuse of the office at the behest of the ruling party.

In defiance of its clear majority in the Legislative Assembly in 1959, PM Nehru led Central Government dismissed E.M.S. Namboodiripad's first democratically elected Left Government in Kerala. On Governor Burgula Ramakrishna Rao's counsel Jawaharlal Nehru dismissed the government. The Governor acted in conceptual contrast to the spirit of authority bestowed on it under Article 356 of the Indian Constitution.

The office of the Governor was further devalued during the Prime Ministership of Indira Gandhi (1966-77 and again from 1980-84).

In 1967, with the instructions from the Centre, the Government in West Bengal was dismissed within eight months of its formation. The dismissal was enacted in contentious circumstances by the then-Governor Dharma Vira. Without even giving Ajoy Mukherjee a prospect to prove his majority on the floor of the Assembly, in 1967 the Governor dismissed the United Front Ministry and commissioned P.C. Ghose as the new Chief Minister. Because of his reputation as "Indira Gandhi's Man", Dharma

Vira's appointment had been opposed by the Left. After deliberation with the Prime Minister, in November 1967, the Governor refused to agree to the majority claims of the Front, even though they had not actually been tested. President's Rule was promulgated on the state.

In another instance, without determining whether the Ministry headed by Choudhary Charan Singh enjoyed the support of the majority MLAs in the House, the then Governor of Uttar Pradesh Bezawada Gopala Reddy dismissed it in October 1970.

In 1984, the then Governor of Andhra Pradesh, Ram Lal Thakur also went beyond his brief following the instructions from the Centre. Despite N.T. Rama Rao's Telugu Desam Party government enjoying the majority in Andhra Pradesh in 1984, it was terminated, thus, subverting people's mandate. It boomeranged on the Centre and dented the personal image of Prime Minister Indira Gandhi. Ram Lal did not give NTR an opportunity to prove his majority on the floor of the Assembly. This led to nation-wide protests and triggered angry debates in Parliament and Ram Lal had to resign in disgrace for his indefensible action.

In 1977, when the Janata Party government took over, all Governors appointed by Indira Gandhi were asked to demit office. The new regime argued that those Governors blatantly used the Raj Bhawan as a platform to manage Indira Gandhi's nefarious programmes during the Emergency.



Congress' Sushilkumar Shinde, who served as Andhra Pradesh Governor between 4 November, 2004 and 29 January, 2006, had left his post to be made a Cabinet minister in the UPA government.

In July 2004, the then President A.P.J. Abdul Kalam impeached the Governors of Uttar Pradesh, Gujarat, Haryana and Goa on the advice of the newly elected UPA government. NDA appointed Governors such as Vishnu Kant Shastri, Kailashpati Mishra, Babu Parmanand and Kidar Nath Sahani were given the marching because of their RSS background. In response, former BJP MP, B.P. Singhal filed a writ petition in the Supreme Court.

In **B.P. Singhal v. Union of India, (2010) 6 SCC 331**, Supreme Court of India held:

*44. In such a scenario of myriad policies, ideologies, agendas in the shifting sands of political coalitions, there is no question of the Union Government having Governors who are in sync with its mandate and policies. Governors are not expected or required to implement the policies of the Government or popular mandates. Their constitutional role is clearly defined and bears very limited political overtones. We have already noted that the Governor is not the agent or the employee of the Union Government. As the constitutional head of the State, many a time he may be expressing views of the State Government, which may be neither his own nor that of the Centre (for example, when he delivers the special address under Article 176 of the Constitution).*

*45. Reputed elder statesmen, able administrators and eminent personalities, with maturity and experience are expected to be appointed as Governors. While some of them may come from a political background, once they are appointed as Governors, they owe their allegiance and loyalty to the Constitution and not to any political party and are required to*

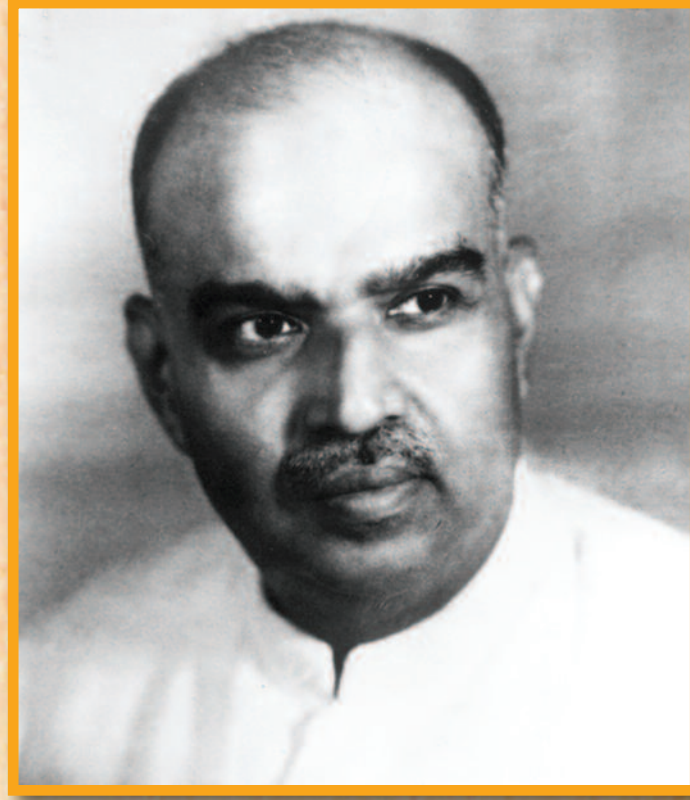
*preserve, protect and defend the Constitution (see the terms of oath or affirmation by the Governor, under Article 159 of the Constitution). Like the President, Governors are expected to be apolitical, discharging purely constitutional functions, irrespective of their earlier political background. Governors cannot be politically active.*

*46. We therefore reject the contention of the respondents that Governors should be in “sync” with the policies of the Union Government or should subscribe to the ideology of the party in power at the Centre. As the Governor is neither the employee nor the agent of the Union Government, we also reject the contention that a Governor can be removed if the Union Government or party in power loses “confidence” in him.*

*70. We have however already rejected the contention that the Governor should be in sync with the ideologies of the Union Government. Therefore, a Governor cannot be removed on the ground that he is not in sync or refuses to act as an agent of the party in power at the Centre. Though Governors, Ministers and the Attorney General, all hold office during the pleasure of the President, there is an intrinsic difference between the office of a Governor and the offices of Ministers and the Attorney General. The Governor is the constitutional head of the State. He is not an employee or an agent of the Union Government nor a part of any political team...*

The Supreme Court, in its judgment in the *BP Singhal vs Union of India (2010)* case, clearly said that the power to remove Governors should only be exercised in rare and exceptional circumstances for valid and compelling reasons. This power cannot be exercised in an arbitrary, capricious or unreasonable manner.





“The gigantic task of reconstruction, cultural, social, economic and political can be rendered possible through coordinated efforts of bands of trained and disciplined Indians. Armed with the knowledge of Indian’s past glory and greatness, her strength and weakness, it is they who can place before their country a programme of work, which while loyal to the fundamental traditions of India civilisation will be adapted to the changing conditions of the modern world.”

**- Dr. Syama Prasad Mookerjee**

*Convocation Address delivered at Gurukul Kangri  
Viswavidyalaya, Haridwar, 1943*



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