



KAMARAJ IAS ACADEMY
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Removal of council of ministers

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Why is in news? The Governor's move is dangerous, unconstitutional

The Governor of Tamil Nadu dismissed a Minister in the Council of Ministers of Tamil Nadu. Later, the governor backtracked on his decision, keeping the "dismissal" order in abeyance.

The TN Governor's move to 'dismiss' a Minister highlights the point that the pleasure of the Governor under the Constitution of India pertaining to Ministers is not the same as that of the colonial Governor.

Why the Governor's move is Dangerous?

Against the spirit of Federal Structure:

This **unprecedented act of dismissing a Minister** of a government which **enjoys an absolute majority in the State legislature, without the recommendation of the CM** of the State, is going to set a dangerous precedent.

It has the potential to **destabilise State governments** putting the federal system in jeopardy.

Unconstitutional Move:

If Governors are allowed to exercise the power of dismissal of individual Ministers without the knowledge and recommendation of CM, the whole constitutional system will collapse.

The Governor's letter says he was invoking Articles 153, 163 and 164 of the Constitution.

The constitutional scheme set out in these articles given to discretion powers to the Governor in the matter of appointing and removing ministers, which is under the CM's domain.

The Governor's unilateral removal of someone on the pretext that his earlier advice to fire a Minister was disregarded would be a constitutional misadventure.

Whether Governors have the power to dismiss an individual Minister without the advice of the Chief Minister?

Under **Article 164** of the Constitution, the Chief Minister is appointed by the Governor without any advice from anyone. But **he appoints the individual Ministers only on the advice of the Chief Minister**.

The Article implies that the Governor cannot appoint an individual Minister according to his discretion. So, logically, the Governor can dismiss a Minister only on the advice of the Chief Minister.

The **Chief Minister alone has the discretion to choose his Ministers**. He decides who the Ministers of his Council will be. He also decides who will not remain as a Minister in his Council.

This is a political decision of the Chief Minister, who is ultimately answerable to the people. The **Constitution has not transferred the discretion of the Chief Minister to the Governor**.

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During the colonial rule, as per the Section 51(1) and Section 51(5) of the Government of India Act, 1935 – two things are get cleared – (i) the Ministers are chosen by the Governor, (ii) they are dismissed by him at his discretion. Thus, **the Governor during the colonial rule had absolute discretion to choose a Minister and dismiss him.** The **hire and fire approach.**

But, **independent India** has a constitutional system under which a **Governor is a mere constitutional head** and he can **act only on the aid and advice of the Council of Ministers headed by the Chief Minister.**

B.R. Ambedkar had stated unambiguously in the Constituent Assembly that **there is no executive function which a Governor can perform independently under the Constitution.**

Some Supreme court's judgements:

In **Shamsher Singh and Anr vs State Of Punjab (1974)**, a seven- judge Constitution Bench declared the Law on the Powers of a Governor is in accordance with the advice of their Ministers save in a few well known exceptional situations.

Seven Judge Constitution Bench held that the **Governor must exercise “formal constitutional powers only upon, and in accordance with the aid and advice of their ministers,** save in a few well-known exceptional situations.

These **exceptions relate to dismissal of a government that has lost its majority or decision to invite a party to form the government.** In both these circumstances, the aid and advice of the Council of Ministers **becomes unavailable or unreliable.**

Court also held that the **Governor has no right to refuse to act on the advice of the Council of Ministries.** Such a position is antithetical to the concept of ‘responsible government’.”

Similarly, in **Nabam Rebia vs Deputy Speaker**, a Constitution Bench of five judges **reaffirmed the law laid down in Shamsher Singh** and further held that the **discretionary powers of the Governor are limited to the postulates of Article 163(1).**

The Court also set aside the **decisions in the Mahabir Prasad Sharma and Pratapsing Raojirao Rane cases,** where it was held that the **Governor can exercise power under Article 164 in an unfettered manner.**

Constitutional Head of a State under Article 153 and 154, and as

An agent of the Centre as he holds office during the pleasure of the President under **Article 156.**

The governor is neither directly elected by the people nor indirectly elected by a specially constituted electoral college as is the case with the president.

Under **Article 155**, Governor is appointed by the President by warrant under his hand and seal. In a way, he is a nominee of the Central government.

Article 163: There shall be a **Council of Ministers with the CM at the head to aid and advise the Governor** in the exercise of his functions, **except in so far as he is by or under this constitution required to exercise his functions or any of them in his discretion.**

Under **Article 164**, Governor appoints the Chief Ministers and other Ministers and the Ministers holds office during the pleasure of the Governor

Article 191 - Disqualifications for membership-

(1) A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State-

[(a) if he **holds any office of profit** under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder;]

(b) if he is of **unsound mind and stands** so declared by a competent court;

(c) if he is an **undischarged insolvent**;

(d) if he is **not a citizen of India**, or has **voluntarily acquired the citizenship of a foreign State**, or is under any acknowledgment of allegiance or adherence to a foreign State;

(e) if he is **so disqualified by or under any law made by Parliament**.

[Explanation. For the purposes of this clause], a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State specified in the First Schedule by reason only that he is a Minister either for the Union or for such State.

[(2) A person shall be disqualified for being a member of the Legislative Assembly or Legislative Council of a State if he is so disqualified under the Tenth Schedule.]

Governor functions both as head of the state and as an agent of the centre and accordingly has been bestowed with the following **discretionary powers**:

Reserve any Bill for the consideration of the President - Article 201.

Appoint Chief Minister of State - Article 164(1), inviting leader of the single largest party in to prove majority in case of hung assembly.

Dismiss the ministry as the CM and his ministers hold office during the pleasure of the Governor - Article 164(1)

Sending report to the President under Article 356 - failure of Constitutional machinery in States.

Governor's responsibility for administration of Tribal Areas and responsibilities placed on the Governor under Article 371A (Nagaland), 371C (Manipur), 371H (Arunachal Pradesh).