

Competitive Exams: Consitution Articles and Doctrines

Sarkaria Commission Report on the Office of Governor

To provide greater neutrality to the person holding the office of the Governor, the Sarkaria Commission has suggested certain standards to be followed by the Central Government while appointing a person to the office. These are:

- The State must be consulted before the appointment of a person to the office of the Governor.
- The Governor should not belong to the same State.
- He should be an eminent figure in any walk of life.
- He should have detached himself from the local politics of that State.
- He should not have been actively involved in politics in recent past.
- He should not be a politician of the ruling party at the Centre, if the State to which he is being appointed is ruled by some other party (parties).
- Persons of the minority groups should continue to be given a chance.
- System of sending fortnightly report to the President by the Governor must continue.
- The power of the Governor to refer any Bill to the Centre for the President's assent must continue.

Powers of the President and Governor: A Comparison

- The office of the President is more ceremonial than functional. But the Governor's office is ceremonial as well as functional.
- The Constitution has explicitly conferred certain discretionary powers on the Governor, but for the President, there are no explicit discretionary function it is inferred from the constitution.
- Other than all the discretionary powers of the President, a Governor enjoys the following powers, which are not enjoyed by the President:
 - According to Art. 163 (1), there shall be a Council of Ministers to aid and advise the Governor in the exercise of his functions, except in so far as he is required to exercise his discretion. Thus, the discretionary powers of the Governor are explicitly mentioned in Art. 163.
 - According to Article 163 (2), if any question arises whether any matter is discretionary or not, the decision of the Governor in his discretion shall be the final.

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- Exercising powers under Art. 200, the Governor can reserve the Bill passed by the State Legislature for the President's consideration. Such power is not available to the President.
- Under Article 356, the Governor can invite the President to take over the administration of a State, if he feels that the State Government cannot function in accordance with the provisions of the Constitution. Thus the administration of the State will be directly under the control of the Governor. But there is no such provision of taking over the administration for the President.
- A Governor can exist without the aid and advice of the Council of Ministers (during the President's Rule). But the President cannot function without the aid and advise of the Council of Ministers. That is, there is no provision of the President's Rule for the Union.
- The Governors of certain States have been granted 'Special Responsibilities' under the Constitution (Art. 371). In fact, this power has been invested to the office of the President who directs the State Governors to perform specific works/duties.
- The 'Special Responsibility' is totally at the discretion of the Governor and his individual judgment cannot be questioned in any court of law. Under the cover of Special Responsibility, the Governors of different States have different functions.

Functions of Governor

1. For the Governors of Maharashtra and Gujarat, it is regarding special care, for the development of Vidarbha and Saurashtra regions respectively.
2. For the Governor of Nagaland, it is the maintenance of law and order so long as disturbance by the Nagas continues.
3. For the Governor of Manipur, it is regarding securing proper functioning of the Committee of Hill Areas.
4. For the Governor of Sikkim, it is basically for peace in the State and equitable arrangement for ensuring social and economic advancement of different sections.
5. In the States of Bihar, Madhya Pradesh and Orissa, the Governors have to see that a Special or Separate Ministry for the development of tribals is constituted. Thus the office of the Governor is that of both dignity and authority, while that of the President is more of dignity and prestige.

Doctrine of Colorable Legislation

- This doctrine is explicitly applicable in a Federal Constitution.
- In a federal Constitution, the transgression of its limits of power by a Legislature may be either overt and direct or disguised, indirect and covert.
- If the legislation is disguised, indirect and covert, it is called 'colourable' legislation.

- In this case, although the subject on which the Legislature makes laws falls within its competence in outward appearance, its real intention is to transgress the power of other Legislature covertly or in a disguised way.
- Applying the doctrine of colourable legislation, the Court can invalidate the entire law.
- The motive and spirit of the doctrine is that what the Legislature cannot do directly, it cannot do the same indirectly also.
- This doctrine was upheld by the Supreme Court in the case of Moopil Nair Vs State of Kerala.

Doctrine of Pith and Substance

- Within their respective spheres, the Union and the State legislatures are made supreme and they should not encroach on the sphere reserved for the other.
- If a law passed by one encroaches upon the field assigned to the other, the Court will apply the doctrine of pith and substance.
- If it is found that the law in substance is within the subjects assigned to that Legislature and the intention of the law is genuine, the law shall be held valid in its entity, even though there is some overlapping.
- The justification of this is that since there cannot be clear-cut division of powers between the Centre and the States, a strict verbal interpretation of any provision would result in invalidation of many laws on the ground of overlapping.
- The Supreme Court propounded this doctrine in the case of State of Rajasthan Vs G. Chawla in 1959.
- In the opinion of the Court, such encroachment is only incidental and hence the extent of invasion is immaterial.

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