

Presidential Reference V/S The Federal Structure

Mains: GS II – Challenges Pertaining to the Federal Structure

Why in News?

Recently, the Supreme Court of India's answers to the 16th Presidential reference on the powers of Governors and the President of India has risen many questions.

What are the terms to be understood?

- **Presidential reference** – It is a constitutional mechanism in India, under Article 143, where the President of India seeks an advisory opinion from the Supreme Court on a question of law or fact of public importance.
- **Federal structure** – A federal structure is a system of government where power is divided between a central authority and regional governments (like states or provinces).
- **Status of states in India**
 - **Equal partners** – Under the constitutional scheme, the Union and States are equal partners, with the Government of India being only 'first among equals'.
 - **Units of autonomy** – States are not subservient to the Union Government, nor are they secondary appendages, bound by the diktats of the Government of India.
 - In fact, in all areas in the State list (such as land laws and law and order), they enjoy complete autonomy.

What are the issues with the governor?

- **Delay in assent to bills** – Delaying the bills passed by the state legislature indefinitely by the Governor would effectively now down an 'elected Legislature' before the whims of an 'unelected Governor'.
- **Acting as agents of ruling party** – Governors are appointees of the ruling party at the Centre, who, more often than not, act on the whims of those in power in the Government of India and even actively accommodate their political agendas.
- The scales of federalism and democracy must be weighed between what the Supreme Court calls the "unwritten and undefined powers" of an unelected Governor.
- **Serving the political agenda** – Governors act to serve the political agenda of the Government of India vis-à-vis the mandate of an elected State Government and Assembly reflecting the will of the people of that State.
- **Absence of timeline** – Once the Legislature has passed a law, a timeline on the exercise of the powers by the Governor, under Article 200 of the Constitution of India, has to be read therein to bring it in conformity with the principle of federalism, which

is part of the basic structure.

- This is not just harmonious but also imperative in the current climate of unprecedented administrative excesses.
- **Past judgement of Supreme Court** - The two-judge Bench in the Tamil Nadu Governor's case understood this and prescribed finite and reasonable timelines accordingly.
- This decision of the court which led the President to seek an opinion from the Supreme Court.

What are the benchmark to measure the legitimacy of governor's power?

- **Power of the Governor** - It has to be tested on the touchstone of reasonableness, i.e., a reasonable time to think through and decide on the Legislation.
- If this timeline is not read, the Governor will become an unelected despot over an elected Government.
- **Essence of constitution** - Fairness, reasonableness and non-arbitrariness are the threads that run through the veins of our Constitution, and especially Part III which protects citizens against a wayward state.
- If you anoint unelected Governors or even the President of India as unbridled monarchs over elected governments, the entire edifice of the Constitution will start to crumble.
- **Judicial Review** - It is also a part of the basic structure of the Constitution. No authority, howsoever high it may be, including Parliament, can ever say that its actions will not be tested by judicial review.
 - The exercise of powers by the Governor or the President of India cannot remain alien to the principle of judicial review.
 - The office of Governor or the President of India is not bigger than Parliament.
 - Even Parliament cannot escape judicial review for its actions.
- **Against constitution** - The theory of 'limited direction' propounded by the Court goes against:
 - The grain of the constitutional scheme,
 - The doctrine of federalism,
 - The doctrine of reasonableness enshrined in Article 14,
 - The doctrine of judicial review and the principles of fairness and justice.
- **Unrestrained powers** - To give such unbridled power to the Governor and the President to keep important pieces of legislation pending for long periods of time, so as to defeat the very purpose thereof, cannot be accepted.

How the federal design is undermined in recent times?

- **GST compensation disputes** - The refusal by the central government to provide compensation to producing States for loss of Goods and Services Tax, thereby effectively disincentivising efficiencies, revenue generation and good governance.
- **Issues with cess** - The cess collected exclusively by the central government being used as an excuse to deny sharing of its revenue with the States.
- **Denial of devolutions** - Refusal by the central government to fully implement the devolutions recommended by the Finance Commission.

- **Placing financial pressure on states** – forcing States to adhere to a ‘one-size-fits-all’ conditions to central schemes and making them conditionally applicable to States only on States agreeing to contribute up to 50% of the schemes budgeted expenditure.
- **Misapplication of Financial powers** – Weaponisation of money in the central kitty by providing financial support as a quid pro quo for advancing the political agenda of the party at the Centre.
 - **For Instance**, the recent transfer of ₹10,000 to 1.21 crore women in Bihar very close to the Bihar Assembly election 2025 or the grant of a special financial package for Andhra Pradesh in the last Budget are two recent examples.
- **Misuse of institutions** – The misuse of the Central Bureau of Investigation/Enforcement Directorate/Income-Tax Department to raid, browbeat, arrest Chief Ministers and Ministers and bring down Opposition governments.
- **Control through governor** – The central control through the Governor’s fiat, which will collapse the spirit of federalism.

What lies ahead?

- If this deep distortion of federalism is permitted to take root, the Union Government will command unrestrained authority while States are reduced to mere administrative outposts.
- Democracy cannot survive where the will of the people is held hostage to the whims of unelected constitutional functionaries.
- It is imperative that citizens take notice, institutions reflect, and the Supreme Court reconsiders.
- Because the preservation of federalism is the preservation of India itself.
- In the journey of every nation, there comes a moment where institutions must stand up as solid guardrails to defend what is intrinsic to the foundational values of the nation-state.
- Because, if the foundational principles are allowed to crumble, the remaining structure will wither away.
- Further, the institutions which sanction such an obliteration of core ideas, almost always meet the same end.
- Once the tree falls, the branches cannot survive.

Reference

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