The Tussle between Governor and Chief Minister

What is the issue?

West Bengal Chief Minister Mamata Banerjee's outburst against Governor Jagdeep Dhankhar has again brought to the fore, the role of the Governor in relation with the elected government and legislature.

How is the Governor related to the States?

- The governor acts as the nominal head whereas the real power lies with the Chief Minister of the state.
- While the President of India is "elected", the governor is "selected" by the incumbent central government.
- Governor is the constitutional head of the state as well as the vital link between the Union and State government.

What are the discretionary powers of the Governor?

- **Article 163-** There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except the discretion granted by the Constitution.
- If any question arises whether a matter is within the Governor's discretion or not, the Governor's decision shall be final.
- The **discretionary power of the Governor is wider than that of the President** as he enjoys both the constitutional as well as situational discretionary power unlike the President who enjoys only situationary discretion.
- **Constitutional discretionary powers**
    1. **Article 167**- The Governor can seek information from the chief minister about state administrative and legislative matters
    2. **Article 200**- The Governor can reserve a Bill for President's consideration
    3. **Article 356-** The Governor can recommend the President to impose President's rule on failure of constitutional machinery
    4. The Governor is not bound to act on the aid and advice of CM and council of ministers while performing his duties as the administrator of a neighbouring union territory (in case of additional charge).
    5. **Sixth schedule-** The Governor may determine the amount payable to an autonomous Tribal District Council as royalty from mineral exploration licences by the governments of Sixth Schedule areas (Assam, Meghalaya, Tripura, and Mizoram)
- **Situational discretionary powers**
    1. **During Hung Assembly-** The Governor can appoint chief minister when no party has a clear-cut majority
    2. **No-confidence**- The Governor can dismiss the council of ministers when it cannot prove the confidence of the state legislative assembly
    3. The Governor can dissolve the state legislative assembly when the council of ministers

lose their majority

4. **Appointment of caretaker government-** The Governor can appoint the care taker government for a temporary period until a regular government is elected or formed.
5. **Special provisions with respect to States-** The President may provide special responsibility for the Governor to form separate development boards for Vidarbha, Marathwada, Saurashtra and Kutch, as per Article 371.

What are the current tussles between the Governor and Chief Minister?

- **West Bengal-** The Governor Dhankhar has been accused of summoning the Chief Secretary and the Director General of Police on a regular basis
- When they do not turn up, he takes up the matter to Twitter often tagging the Chief Minister.
- Mr. Dhankhar also had a run-in with Assembly Speaker Biman Banerjee recently, on the premises of the State Assembly.
- He has withheld assent to the Howrah Municipal Corporation (Amendment) Bill 2021, delaying polls to the civic body.
- He has made allegations of impropriety in welfare schemes and has questioned the Government claims about investments in the State.
- **Maharashtra**- Governor Bhagat Singh Koshyari has stalled the election of Speaker since the post fell vacant in February 2021.
- The Governor's view that the State Assembly cannot decide its own rules is unacceptable to the ruling coalition.
- He had refused to accept the recommendation of the Council of Ministers on the nomination of 12 members to the Legislative Council, until the matter reached the High Court.
- **Tamil Nadu-** Governor R.N. Ravi has not acted upon the T.N. Admission to Undergraduate Medical Degree Courses Bill, adopted by the Assembly in September 2021.
- The Governor is required to either send it to the President of India for approval or return it for reconsideration by the Assembly, but the indefinite delay in taking a decision is undermining the legislature.

Has any efforts been taken to solve the tussle game?

The Administrative Reforms Commission (1968)

- **President's rule**- It recommended that the report of the governor regarding the President's rule has to be objective and also the governor should exercise his own judgment in this regard.

Rajamannar Committee (1971)

- **Role of Governor**- The Rajamannar Committee stressed that the Governor of the state should not consider himself as an agent of the centre but play his role as the constitutional head of the State.

Sarkaria Commission recommendations- 1983

- **Hung assembly-** It provided the order of preference the Governor should follow in selecting a CM in such a situation
    1. An alliance of parties that was formed prior to the elections.
    2. The single largest party staking a claim to form the government with the support of others, including independents.

3. A post-electoral coalition of parties, with all the partners in the coalition joining the government.
4. A post-electoral alliance of parties, with some of the parties in the alliance forming a government and the remaining parties, including independents, supporting the government from outside.

- **Appointment of Governor**- CM should be consulted in the Governor's appointment.
- **Dismissal of Council of Ministers**- The Governor cannot dismiss the Council of ministers when it commands a majority.

S.R. Bommai Judgment (1994)

- **President's rule**- The Supreme Court classified the instances of failure of constitutional machinery into four heads- Political crises, Internal subversion, Physical breakdown, Non-compliance with constitutional directions of the Union Executive
- The verdict allows the Supreme Court to investigate claims of malafide in the Governor's report.

Punchhi Commission recommendations (2007)

- The Punchhi Commission on Centre-State Relations said that the governor should invite the leader of "a pre-poll alliance commanding the largest number" or the "largest single party" to form the government in case no party or pre-poll coalition has a clear majority.

References

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Quick facts

Constitutional provisions regarding the Governor

- **Article 153 (Presence of Governor) -** There shall be Governor for each State.
- **Article 154 (Executive power)-** The executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.
- **Article 155 (Appointment of Governor)-** The Governor of a State shall be appointed by the President by warrant under his hand and seal.
- **Article 156 (Term of office of Governor)-** The Governor shall hold office during the pleasure of the President. A Governor shall hold for a term of five years from the date on which he enters upon his office.
- **Article 157 (Qualifications for appointment as Governor)-** Must be a citizen of India and has completed the age of 35 years.
- **Article 158 (Conditions of Governor office)-** The Governor shall not hold any office of profit and shall not be a member of the either house of the parliament or house of the state legislature.

- **Article 159 (Oath)-** Every Governor and every person discharging the functions of the Governor shall, before entering upon his office, shall take oath in the presence of the Chief Justice of the High Court or, in his absence, the senior most Judge of that Court available.
- **Article 161-** Power of Governor to grant pardons, etc, and to suspend, remit or commute sentences in certain cases**.**

