

Unveiling Gubernatorial Overreach in India: A Critical Analysis through the Lens of Cooperative Federalism

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“Federalism is not a set of fixed institutions. It is a process, a continuing search for a harmonious balance between unity and diversity.” –

Daniel J. Elazar.

Abstract

Recently, much attention has been garnered by the tumultuous relationship between the centre and the states due to the arbitrary exercise of discretionary powers by some governors in a few instances. This is referred to as gubernatorial overreach, in which the governor goes beyond his constitutionally circumscribed role and undermines parliamentary democracy and cooperative federalism. Cooperative federalism is an integral part of federalism and is implicitly envisioned in the Constitution of India. It is crucial to foster collaboration between the Union and states to address diverse inequalities in economic development, education, infrastructure, etc, ensuring balanced growth across regions. Cooperative federalism is the best available tool for maintaining the unity and integrity of a heterogeneous, diffuse society like India. The Apex court emphasised the need for state independence, along with the necessity of central coordination and collaboration between states and the centre for the development of each state and the country as a whole. The recent events of gubernatorial overreach in Tamil Nadu, Telangana, Punjab, and Kerala raised questions that needed to be answered to maintain India's unity and integrity. This paper examines the contours of gubernatorial overreach in India to better understand its implications on political stability and democracy in the light of cooperative federalism. Moreover, it seeks to analyse the constitutional limits on the governor's discretionary powers by critically examining notable precedents.

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I. Introduction

India is a pluralistic country with diverse and distinct cultures across its several states. Each state is geographically, economically, and culturally different from the others, yet they all need each other to co-exist. The Constituent Assembly knew that India needed a federal structure, but with a twist. Therefore, they introduced a federal structure with a strong central government. The Constitution of India provides a structure in which, at the centre, there is a union government with control over each state within the limits imposed by the Constitution itself, whereas the states have limited sovereignty over their territories, and the centre cannot interfere unless it blatantly violates values that are the foundations of the Constitution, such as the principle of federalism. In the *S.R. Bommai case*, the court stated that, “*Federalism is one of the basic structures of the Constitution*”³ Cooperative federalism is part of federalism and implicitly embedded in every provision of the Constitution. It is not just a concept; it is a necessity for the existence of a welfare state. Well-coordinated and collaborative work between the states and the union will only lead to the development of both the states and the nation. However, after a certain period following independence, when multiple national and regional political parties were introduced, the political landscape radically changed. In the centre and states, different parties have been ruling, leading to several instances of miscommunication and uncoordinated actions that have hindered the development of both the nation and the states.

This changing political scenario has also affected the role of the governor in India. Recently, many unfortunate events of gubernatorial overreach have occurred. It totally shook the constitutional pillars of cooperative federalism and parliamentary democracy. The governor's misuse of discretionary powers caused disharmony between the union and the states. The unwanted interference eroded democratic values in the country. The governor is considered a communication link between the union and the states. He is the

³ S.R. Bommai v. Union of India, 1994 (3) SCC 1

union's representative in the state. In India, the governor is the head of the state and is vested with the executive powers of the state, but can exercise them with the aid and advice of the council of ministers. There are only a few exceptional circumstances permitted by the Constitution itself, where the governor can exercise his own discretion. However, the Supreme Court held, on several occasions where the governor exercised his discretion in an unfair and arbitrary manner, that the governor's discretionary power must be exercised within the limits of constitutional values and any transgression of them will make such exercise of powers subject to judicial review.

This paper critically examines the contours of gubernatorial overreach in India in the light of cooperative federalism. Its objectives: firstly, to study in depth the concepts of federalism, cooperative federalism and its evolution in India; secondly, to analyse the scope and relevance of the governor's role, emphasising his role as a link between the union and the states, thirdly, the challenges posed by gubernatorial overreach in India; and lastly, to critically analyse notable precedents concerning gubernatorial overreach and to find the settled principles concerning the discretionary power of the governor.

II. Analysing the Paradigm of Cooperative Federalism: Conceptual Insights and its Historical Evolution in India

A. The Concept of Federalism

Even though federalism, as a word, originated from a Latin term, *foedus*, which literally means “treaty” or “alliance”,⁴ at its most basic, it represents a system of government in which powers are distributed across multiple levels of government. In this arrangement, authority is divided between the central and regional governments, and their respective powers are derived from the Constitution itself. Therefore, sovereignty in such systems is not concentrated at a single level; rather, the legislative, executive, and judicial authority is shared between the centre and the federating units. A federal government presupposes a written, rigid constitution that restricts the central government from depriving its constituent units of autonomy.⁵ Some of the institutional

⁴ Anusha Pal, *Analysis on 'Cooperative and Competitive Federalism' in India*, 2 INDIAN J. INTEGRATED RES. L. 1 (March-April 2022).

⁵ See INDIA, CONSTITUENT ASSEMBLY DEBATES, Vol. VII, Book 2, at 35 (Nov. 15, 1948).

advantages of federalism include integrating regional diversity, providing checks on the concentration of power, and increasing citizen participation. There are certain characteristics that a federal constitution is commonly understood to possess. Two levels of government, a national government for the entire country and regional governments for the territorial units of the country, are a feature. The attribute requiring a distribution of legislative, executive and judicial powers between these governments is also peculiar to the federal constitution. Further, the supremacy of the Constitution, which necessitates strict formalities for altering these arrangements of power allocation and intergovernmental relations, makes the system unique. When national and regional governments exercise their respective powers and responsibilities, disputes are to be expected; consequently, the existence of an independent dispute-resolution mechanism is also a defining feature of such a model. It is instructive to analyse the scheme of the Constitution of India by these parameters.

In the Indian Constituent Assembly Debates, the use of the term federal was almost deliberately blurry.⁶ The meaning of federalism was not settled but was very much contested. The reason was that for some members, the word signified unity, decentralisation of powers, minority protection, etc.⁷ However, concerns about fragmentation, separatism, administrative disorders, etc, were troubling the other members.⁸ According to William H. Riker's theory, there are two reasons for the formation of federations: the expansion condition and the military condition.⁹ The expansion conditions explain that territorial units unite to expand their control, and the military condition signifies the union due to external or internal threats.¹⁰ Riker claimed that both conditions were applied in the formation of the Indian system, citing the occasions of incorporating

⁶ MICHAEL BURGESS, *Federalism and Federation: The Origins and formation of Federal States*, in COMPARATIVE FEDERALISM: THEORY AND PRACTICE (Taylor & Francis e-Library 2006).

⁷ *Id.*

⁸ *Id.*

⁹ WILLIAM H. RIKER, FEDERALISM: ORIGIN, OPERATION, SIGNIFICANCE 12–13 (Little, Brown & Co. 1964).

¹⁰ *Id.*

princely states into the territory and the threats against various religious communities in the country as examples.

Leaving aside the political factors, a de jure analysis reveals that India's constitutional arrangement falls within the parameters of the federal model, though it is *sui generis*. The Constitution of India establishes two levels of government: The Union and the State governments, with their own legislature and executive. The description of India as a Union of States in the Constitution affirms the federal structure, emphasising its unity and indestructibility. The powers, legislative, executive and financial, of the governments are clearly demarcated under the Seventh Schedule of the Constitution through three lists: the Union List, the State List and the Concurrent List. Though these arrangements are included in the Constitution, they cannot be altered unilaterally by either the Union or the States. Constitutional amendments require special procedures and ratification by the states. Moreover, any law enacted by any entity is void if it is inconsistent with the Constitution. All these factors, inter alia, make the Constitution supreme. Also, the Constitution provides for the establishment of an independent judiciary, which has the authority to adjudicate the disputes between the Union and States and ensures that the governments act within their limits prescribed by the Constitution.

Dr B. R. Ambedkar's statements during the debates of the Constituent Assembly provide a clear picture of the structure of the Indian government. He stated that "*The basic principle of Federalism is that the Legislative and Executive authority is partitioned between the Centre and the States not by any law to be made by the Centre but by the Constitution itself... This is the principle embodied in our Constitution. There can be no mistake about it*".¹¹ He also stated that, "*unlike other federations, the Indian federation is an indestructible Union in which the States have no right to secede from it. The division of the Union into different States was intended only for administrative convenience, and the country is one integral whole*".¹²

¹¹ INDIA, CONSTITUENT ASSEMBLY DEBATES, Vol. XI, Book 5, at 976 (Aug. 24, 1949).

¹² *Id*

The Apex Court has expressed similar views in many of its decisions. In the case of *Ganga Ram Moolchandani and Ors. v. State of Rajasthan and Ors.*,¹³ the Supreme Court maintained that the “*Indian Constitution is basically federal in form and is marked by the traditional characteristics of a federal system, namely, supremacy of the Constitution, division of power between the Union and States and existence of an independent judiciary*”¹⁴. The judgment thus reinforced that the Constitution incorporates federal characteristics. By interpreting federalism as part of the basic structure of the Constitution in the landmark decision of *Kesavanandha Bharati v. State of Kerala*, the Hon’ble Court established that the Constitution of India is essentially based on federal principles and that the Parliament is restricted from amending provisions affecting federalism. The judgment in *S R Bommai v. Union of India*¹⁵ affirmed this view of the listing of the federal structure as one of the basic features of the Constitution. The same decision encouraged interpreting the Constitution in a way that promotes the federal structure. In the case of *Jindal Stainless Ltd v. State of Haryana*¹⁶, the Supreme Court further developed this by stating that instead of adopting any interpretative approach that waters down the federal character, courts should prefer an interpretation that preserves the principles.

At the same time, the Apex Court has consistently acknowledged that federalism in India is not in its classical or dual form, as in the United States, but is rather pragmatic or quasi-federal. In the case of *State of West Bengal v. Union of India*, it was held¹⁷ that, “*the Constitution is not truly federal, as it did not arise from an agreement between independent units surrendering and vesting a part of their power in a Union.*”¹⁸

It is due to the unique structure of the Constitution, which incorporates certain unitary features, that it is characterised as quasi-federal. A single constitution for the whole country, single citizenship, parliament’s power in residuary

¹³ *Ganga Ram Moolchandani and Ors. v. State of Rajasthan and Ors.*, AIR 2001 SC 2616

¹⁴ *Id*

¹⁵ *S R Bommai v. Union of India*, (1994) 3 SCC 1

¹⁶ *Jindal Stainless Ltd v. State of Haryana*, (2017) 12 SCC 1

¹⁷ 1963 AIR 1241.

¹⁸ *State of West Bengal v. Union of India*, 1963 AIR 1241.

legislative matters¹⁹, provisions that centralise powers during an emergency, etc.,²⁰ are some of the unitary traits that coexist with federal features such as a written constitution, supremacy of the constitution, an independent judiciary, and division of powers.

B. The Historical Evolution of Cooperative Federalism in India

Lessons from the British rule and the Government of India Act, 1935, drove the framers of the Constitution to design a system of shared governance that would harmonise national strength and unity with regional diversity. They were aware of the challenges faced by the country, such as its vast geography, linguistic diversity, and socio-economic differences in governance, and acknowledged the need for some element of cohesion alongside State autonomy.

Even though the Constitution provides for division of functions, it is not possible to operate in watertight compartments.²¹ The country's deepened socio-economic agenda fostered the functional interdependence of governments. Sometimes it is the national interest, and sometimes the implications of administrative or legislative decisions extend beyond the territorial boundaries of a particular State, which demands a uniform approach.²² This interdependence was recognised, and the framers accommodated certain mechanisms into the Constitution to ensure cooperation and coordination among the governments. This is why Granville Austin, departing from the concept of federalism defined by Dr K. C. Wheare, characterised Indian federalism as cooperative federalism, as defined by A. H. Birch.²³

According to Dr K. C. Wheare, "federalism requires that the general and regional governments of a country shall be independent of each other within their spheres, shall not be subordinate one to another but coordinate with each other".²⁴ For him, even though the Constitution reflects federal features, it is not

¹⁹ INDIA CONST. art. 248.

²⁰ INDIA CONST. pt. XVIII

²¹ M.P. JAIN, INDIAN CONSTITUTIONAL LAW 1012 (7th ed. LexisNexis 2014).

²² M.P. JAIN, INDIAN CONSTITUTIONAL LAW 1014 (7th ed. LexisNexis 2014).

²³ GRANVILLE AUSTIN, THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION 186–187 (Oxford Univ. Press 2008).

²⁴ K.C. WHEARE, FEDERAL GOVERNMENT 93 (4th ed. 1963).

strictly federal. He pointed out the circumstances under which the Union can intervene in the affairs of states, as validated by the Constitution itself.²⁵ The President's power to declare a state emergency and impose President's rule in the event of a breakdown of the State machinery; Parliament's power to form new states and alter the boundaries of states are some examples. It was owing to these factors that he distinguished Indian Constitution as quasi federal.²⁶

Rather than subscribing to Dr Wheare's 'quasi federal' label, Granville Austin contends that the system closely conforms to A H Birch's concept of cooperative federalism. For him, the Constituent Assembly from the very beginning embraced cooperative federalism.²⁷ Birch defined the principle as "*the practice of administrative co-operation between general and regional governments, the partial dependence of regional governments upon payments from the general governments, and the fact that general governments, by the use of conditional grants, frequently promote developments in matters which are constitutionally assigned to the regions*".²⁸ The approach manifests a deep interdependence between the union and state governments, but it does not subvert the fundamental federal principle. It adapts to the Indian context.²⁹

A segment of scholarship also subscribes to the idea that the relationship between the Union and the states is collaborative³⁰ and the Constitution has laid down a pattern of cooperative federalism³¹. One of them advanced that within the constitutional scheme, "*the personality and the operative freedom of the States may at times be compromised, but it is certainly not crushed and denied*

²⁵ *Id.* at 27.

²⁶ *Id.* at 28.

²⁷ GRANVILLE AUSTIN, *THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION* 187 (Oxford Univ. Press 2008).

²⁸ COMM'N ON CTR.-STATE RELATIONS, *Report* vol. I, at 51, ¶ 4.2.01 (Mar. 2010).

²⁹ *Id.*

³⁰ Iqbal Narain & P C Mathura, *Union-State Relations in India: A case Study in Rajasthan*, in *ESSAYS ON INDIAN FEDERALISM* 113 (S P Aiyar & Usha Mehta eds., Allied Publishers 1965).

³¹ K R BOMBWALL, *THE FOUNDATIONS OF INDIAN FEDERALISM* 279 (1967). See also Iqbal Narain & P C Mathura, *Union-State Relations in India: A case Study in Rajasthan*, in *ESSAYS ON INDIAN FEDERALISM* 113 (S P Aiyar & Usha Mehta eds., Allied Publishers 1965).

together”³² Therefore, the system is also referred to as ‘collaborative federalism’.

Edward S Corwin defined the concept of cooperative federalism as a system in which “*the National Government and the States are mutually complementary parts of a single governmental mechanism all of whose powers are intended to realize the current purposes of government*”.³³ By analysing this definition alongside the interpretations of David Cameron and Richard Simeon, the Apex Court in the *Government of NCT of Delhi v. Union of India* pointed out the necessity of harmony in the working of both the Centre and the States³⁴. Cameron and Simeon considered it a process of intergovernmental collaboration, in which the national government, states, and all territories work together in a collective, cooperative manner to realise national goals rather than acting unilaterally. The apex court acknowledged the difficulties in its strict implementation but emphasised the imperative of cooperation in maintaining a federal structure.³⁵

The Preamble of the Constitution committed to certain principles like Justice, Liberty, Equality, and Fraternity, which can be achieved only through the coordinated action of the government. Avoiding conflicts and constitutional discord, as well as building harmony and interdependence, are not optional virtues for governance but functional necessities for a Welfare State.³⁶ Through consultation, coordination, and mutual accommodation, differences that may arise between governments pursuing developmental goals can be resolved. This approach does not treat the objectives of different governments as competing interests; rather, the entities are expected to address the challenges through joint efforts. What cooperative or collaborative federalism requires is that both the Union and the State governments function within the spheres constitutionally assigned to them and respect the division of powers, without interfering in the

³² Iqbal Narain & P C Mathura, *Union-State Relations in India: A case Study in Rajasthan*, in ESSAYS ON INDIAN FEDERALISM 113 (S P Aiyar & Usha Mehta eds., Allied Publishers 1965).

³³ Edward S. Corwin, *The Passing of Dual Federalism*, 36 Va. L. Rev. 1 (1950).

³⁴ *Government of NCT of Delhi v. Union of India*, (2018) 8 SCC 501.

³⁵ *Id.*

³⁶ *Id.*

other's domain. Nonetheless, the responsibilities are not viewed as isolated compartments but as interconnected functions necessitating coordination.

Justice Fazal Ali's view in the case of *State of Rajasthan & Ors. v. Union of India*³⁷ is also relevant in the discussion. He recognised the necessity of cooperation and coordination among the Centre and States for a smooth and efficient, pragmatic and purposeful working of the Constitution.³⁸ Governments should always ensure there are no conflicts to prevent a constitutional breakdown.³⁹

Hence, it is well settled that Indian Federalism does not impose rigid demarcation but encourages partnership in governance. A careful reading of the constitutional provisions reveals the architects' intention to make it cooperative to an extent.

C. Constitutional Underpinnings of Cooperative Federalism

The Indian Constitution includes certain instruments and bodies that facilitate cooperation between governments, either horizontally or vertically. Beyond that, various agencies have been established by legislation or administrative measures to promote cooperation among them.

Articles 245 – 254 of the Constitution describe the legislative competence of the Centre and the States. Article 246, along with the Seventh Schedule, delineates the powers of the governments to make laws. It enumerates three lists and, with respect to matters mentioned in the Concurrent list, both the Union and the States can make laws. The matters listed are of such a nature that both the Union and the States may have a shared interest in regulating them. They may be neither purely of national concern nor of State interest.⁴⁰ Although the States are empowered to make laws on the entries enumerated in the list only if they remain subject to Article 254, the condition is intended to manage the overlap between Union and State laws in the Concurrent List. Therefore, the States can legislate on matters on which the Parliament has already made laws, without being inconsistent with it. This enables them to

³⁷ *State of Rajasthan & Ors. v. Union of India*, AIR 1977 SC 1361.

³⁸ *State of Rajasthan & Ors. v. Union of India*, AIR 1977 SC 1361

³⁹ *Id.*

⁴⁰ M.P. JAIN, *INDIAN CONSTITUTIONAL LAW* 734 (7th ed. LexisNexis 2014).

work together and fosters cooperation to address issues affecting the entire country. Similarly, by virtue of Article 252, two or more States may request the Parliament to legislate on a subject matter as they consent. Resolutions passed to that effect by the Houses of those State Legislatures give the Parliament the authority to interfere in the sphere of the States and make laws on the delegated subject matter, even if it falls exclusively under the State list.

Typically, when a state's jurisdiction is limited to its own territory, the acts and records made by the State cannot be recognised in any other State. However, Article 361 mandates "*giving full faith and credit to public acts, records, and judicial proceedings of the Union and every State.*"⁴¹ The expression 'public acts' includes not only statutory enactments but also executive and other official acts of the State. Moreover, 'recognition of laws, public acts and records and judicial proceedings' itself is an entry under the Concurrent List. Consequently, the States are also competent to make laws on this matter. Thus, it excludes the possibility of an argument on the recognition of the laws or actions of another State.

The Inter-State Council, established under Article 263, also constitutes an agency of cooperation under the Constitution. The Council is responsible for resolving disputes between the Union and the States, as well as between the States themselves. When so many governments operate in a single territory with separate jurisdictions, disputes and differences are common to arise. Establishing an infrastructure to resolve and reconcile those differences is necessary to achieve the ultimate goal of people's welfare. The Inter-State Council is one such mechanism that makes recommendations for better coordination. However, the Council does not have the authority to make binding decisions; rather, it is advisory. Their decisions, especially on a legal matter, complement the Supreme Court's authority under Article 131 to decide a dispute between governments. The Council may be appointed permanently or as an ad hoc body from time to time. The Central Council for Health and the Central Council of Local Self-Government are some of the Councils appointed under the provision.

⁴¹ INDIA CONST. art. 261.

The Finance Commission's attempts to promote cooperation between governments cannot be ignored. The Finance Commission is a constitutional device that recommends on tax devolution and grants-in-aid. They recognise the principle of cooperative federalism and have often recommended criteria for intergovernmental fiscal transfers, promoting it.

Under Article 279A, a Goods and Services Council has been added through the 101st Constitutional Amendment Act, 2016. Both the Union and the states participate in the discussions and undergo a transparent voting procedure with the aim a fostering cooperative federalism. The Council is composed of the Union Finance Minister, the Union Revenue Minister, and State Finance Ministers, and ensures the participation of all States in the consensus-based decision-making process.

These are some of the constitutional instruments that foster coordination and cooperation among the governments. Apart from these, there are statutory or administrative bodies that operate as platforms for coordination. They include the Zonal Council, NITI Aayog, etc.

Zonal Councils are those bodies established by the State Reorganisation Act, 1956. The Act resulted in the formation of five councils: Northern, Eastern, Western, Central, and Southern, based a geographical and administrative considerations. These Councils act as advisory institutions for intergovernmental consultation and cooperation, and bring together the States in a zone to deliberate on issues of shared concern, especially in socio-economic matters. Every Zonal Council is presided over by a Central Government-nominated Union Minister and comprises the Chief Minister and two other Ministers nominated by the State Government. The association of such a Union Minister promotes vertical cooperation and facilitates the development of common policies for the country's common good.⁴²

NITI Aayog, established as a successor to the Planning Commission, caters to the different development needs of States. In India, planning was unified and required a cooperative and coordinated effort among the Union and State governments. To make planning processes more participatory at the state level, a National Development Council was also established. When the Planning

⁴² M.P. JAIN, INDIAN CONSTITUTIONAL LAW 1022 (7th ed. LexisNexis 2014).

Commission was abolished, the Council was dissolved as well. One of the reasons for replacing the Planning Commission was its widely condemned focus on Union control instead of intergovernmental cooperation. NITI Aayog provides a platform for discussion and collaboration between the Centre and the States on matters of national importance, acting as a public policy think tank. Unlike the Planning Commission, it does not allocate funds for development needs; instead, it facilitates bottom-up planning through States' participation.

Taken together, these constitutional and other devices create channels through which governments can consult and negotiate on matters that affect all of them. Therefore, cooperative federalism in India is not just a descriptive tag but a normative effort and a set of practices that harmonise national unity with regional autonomy. Judicial recognition of the doctrine ensures that cooperation not simply remains as expedient but is constitutionally entrenched.

III. The Controversy of Gubernatorial Roles: A Critical Examination of Gubernatorial Overreach in India

The governor plays a pivotal role in strengthening cooperative federalism in India. He acts as a connecting link between the union and the states. *“Under the parliamentary form of system, the governor plays the role of constitutional head of the State and has ‘a right to be consulted, to warn and encourage’, and he can be referred to as ‘a friend, philosopher and guide’ to his Council of Ministers. So, the governor also serves as a sentinel of the Constitution and a vital link between the Union and the states⁴³.”* For several years after independence, the governor's role was largely passive, and there were no issues. However, according to the Sarkaria commission report which clearly stated that, *“the Fourth General Elections in 1967 marked a turning point, as in a number of States the party in power differed from that in the Union. The fragmentation of the singular political party (the Congress party) and the emergence of new regional parties have led to situations where, at the centre and in states, different political parties are ruling. Moreover, there has been frequent use of coalition parties to form a government. All these led to*

⁴³ SARKARIA COMMISSION, SARKARIA COMMISSION REPORT ON CENTRE-STATE RELATIONS, 116-118 (1988).

instability in several State Governments."⁴⁴ As a result, there were a few occasions where the Governors were called upon to exercise their discretionary powers. However, in some of those instances, the governor's exercise of his discretionary powers resulted in arbitrary actions. The main issue was the governors' arbitrary subjective considerations in the exercise of their discretionary functions. It has had a direct impact on Union-State relations, fueling political struggle and friction between the Union and the states. The most recent gubernatorial overreach concerns reserving the right to assent to bills and to form a government at the state level. So, in order to understand the aforementioned gubernatorial overreach and its impact on cooperative federalism, this paper critically analyses the following heads given below:

A. The Discretionary Role of the Governor under the Indian Constitution

Dr B.R. Ambedkar, while expressing his views on the role of the governor, said that *"He is the representative not of a party; he is the representative of the people as a whole of the State. It is in the name of the people that he carries on the administration"*⁴⁵.

Article 153 of the Constitution of India envisages that, *"there shall be a Governor for each State"*⁴⁶. According to Article 154, *"the governor is appointed by the President and holds office at his pleasure. He is entrusted with the executive powers of the State and exercises them either directly or through his subordinate officers as per the provisions of the Constitution."*⁴⁷ According to Article 163(1), *"he exercises almost all his executive and legislative functions with the aid and advice of his Council of Ministers."*⁴⁸ It is rightly said that he is only a representative of the state, and the real power is in the hands of the Council of Ministers. Thus, in general, the executive powers of the

⁴⁴ SARKARIA COMMISSION, SARKARIA COMMISSION REPORT ON CENTRE-STATE RELATIONS, (1988).

⁴⁵ PUNCHHI COMMISSION, THE COMMISSION ON CENTRE-STATE RELATIONS 56 (2010).

⁴⁶ INDIA CONST. art. 153.

⁴⁷ INDIA CONST. art. 154.

⁴⁸ *"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 insofar as he is by or under this Constitution required to exercise his functions or any of them in his discretion."*

state are entrusted to the Governor by the Constitution, but they are in reality exercised by the Council of Ministers, except in situations where he is allowed to exercise his discretionary powers. There are certain constitutional provisions and exceptional circumstances in which the governor can exercise his discretion. Some of the constitutional provisions are:

- 1) When reserving the bill for the consideration of the President, Governors can decide on their own without the advice of the Council of Ministers. (Article 200)
- 2) When recommending the President's rule in the state, he can act at his own discretion. (Article 356)
- 3) When he is appointed as the administrator of the Union Territory in addition to his role as the governor, he can take actions at his own discretion. (Article 239(2))
- 4) When he seeks information regarding administrative and legislative affairs from the chief minister. (Article 167)

Some of the exceptional conditions where the governor can exercise his discretion without seeking advice from the Council of Ministers are as follows:

- 1) When appointing the chief minister of a state in a situation of no majority in the election, or when the incumbent of the office, i.e the CM, dies in office
- 2) When dismissing the council of ministers in a case where they are incompetent to prove confidence in the state legislative assembly.

In Ambedkar's words, *"the governor has no functions to exercise but only duties to perform. Those duties are divided into two parts. The first is to retain the ministry affairs, because they hold office at his pleasure; he has the power to decide whether and when to exercise it against the Ministry. The second duty is to advise, warn, and suggest alternatives to the Ministry, and to request reconsideration."*⁴⁹ He is the person responsible for ensuring fair and proper administration in the state. He is the representative of the people of the state. He acts as a connecting link between the states and the union. He is entrusted with

⁴⁹ PUNCHHI COMMISSION, THE COMMISSION ON CENTRE-STATE RELATIONS 56 (2010).

symbolic functions, and he can perform them with the advice of the Council of Ministers unless they come within the purview of his discretionary powers.

B. The Judiciary's Lens on Gubernatorial Challenges: An In-Depth Examination of Landmark Precedents

In 1974, *Shamsher Singh vs the State of Punjab*⁵⁰, the apex court, while deciding the termination of petitioners who were appointed as Subordinate Judges on probation in the Punjab Civil Service, held that “*the Governor acts on the aid and advice of the Council of Ministers in all executive actions, including the appointment and removal of members of the subordinate judiciary. He is not required to act personally without or against the advice of the Council of Ministers, except in situations where the Constitution explicitly provides for discretionary powers*”⁵¹. The role of the governor as a constitutional head of the state obliged him to act as a communication link between the state and the union. The Indian Constitution does not allow him to run a parallel administration in the state in defiance of the aid and advice of the Council of Ministers. His role is primarily symbolic, as the real executive power is vested in the Council of Ministers. In other words, in the battle of power to make executive decisions between a nominal head and an elected representative, it is the latter that wins. Even when the governor exercises his discretionary powers, he should seek to harmonise them with the Council of Ministers' advice, thereby helping ensure the smooth administration of the state.

However, in areas where the governor has the duty to report on the failure of the constitutional machinery under Article 356 of the Constitution of India, he can't follow the advice of the council of ministers and must exercise his discretion fairly. The Supreme Court held in *State of Rajasthan v. Union of India* that, “*The Governor is also an observer on behalf of the Union, tasked with ensuring the proper functioning of the State's constitutional machinery.*”⁵² Therefore, the role of the governor to report under Article 356 is a job to be done without the intervention of the Council of Ministers. It is one of the pivotal roles that are not subject to ministerial advice. Again, in *S.R. Bommai v.*

⁵⁰ 1975 SCR 1 814.

⁵¹ *Shamsher Singh v. the State of Punjab*, 1975 SCR 1 814.

⁵² 1977 AIR SC 1361.

*Union of India*⁵³, the apex court reiterated that the “governor’s role is to act as a link between the state and the union and ensure that the state administration remains within the contours of the Constitution of India.”⁵⁴ The court also held that, “The Governor is obligated to report to the President if the State Government cannot be carried on constitutionally. The report must be detailed, factual, impartial, and based on verified material⁵⁵.” It also observed that, rather than arbitrarily favouring any party to form government, the governor must use a floor test to ascertain a majority to form government unless the circumstances provide contrary ideas⁵⁶.

In 2016, in the *Nabam Rebia* case, the court held, while hearing a case on the governor’s power under Articles 174 and 175 of the Constitution of India, that both functions under those articles are executive functions which can be exercised by the governor only with the aid and advice of the council of ministers. Only in exceptional cases where the Constitution either expressly or by necessary implication required that the discretion of the governor be exercised. The court clearly observed that, “Even though the Governor may be authorized to exercise some functions under different provisions of the Constitution, the same are required to be exercised only on the basis of the aid and advice tendered to him under Article unless the Governor has been expressly authorized, by or under a constitutional provision, to discharge the concerned function, in his own discretion.”⁵⁷ In the *Union of India v. Harish Chandra Singh Rawat* case, the court expressly stated that “the floor test is the only constitutionally ordained method to determine the confidence in the Government⁵⁸.” Moreover, the court held that the discretionary power of the governor is limited. So, he cannot interfere with the speaker’s functions, as the speaker himself is a constitutional authority. The floor test, which is the constitutionally preferred method for checking majority, can be ordered by the governor either at the initial formation of the government, but also during the

⁵³ 1994 (3) SCC 1.

⁵⁴ *Id.*

⁵⁵ S.R. Bommai v. Union of India, 1994 (3) SCC 1

⁵⁶ *Id.*

⁵⁷ *Nabam Rebia v. Deputy Speaker, Arunachal Pradesh Legislative Assembly*, AIR 2016 SC 3209

⁵⁸ 2016 AIR CC 2455 (UTR)

running of the government⁵⁹. However, the governor's demand for a floor test must be based on objective, relevant, and legal factors⁶⁰. The court, while emphasising the Governor's power to order a floor test, stated that “*the Governor’s direction for a floor test does not impinge on the Speaker’s authority to decide on resignations or disqualifications. The floor test operates in a distinct domain to determine the government’s majority*”⁶¹.

The apex court in the *State of Punjab v. Principal Secretary to the Governor of Punjab* case addressed the governor's power to assent to bills under Article 200 of the Constitution of India. It held that the Governor is a symbolic head of state who acts on the ministerial advice, except in areas where the Constitution grants discretionary powers, such as the power to assent to bills. According to this article, “*when a Bill is passed by the State Legislature, the Governor has three choices: first, give assent to the Bill; second, withhold assent to the Bill; or last, reserve the Bill for the President’s consideration*”⁶². The first and second provisos to Article 200 expressly state that the governor may not exercise a pocket veto. There are limitations to the power to assent to bills. “*The first proviso states that a governor may, as soon as possible, after presentation to him of a bill except a money bill, send back the bill to the legislature for reconsideration. Once the bill is resent to the governor after reconsideration, the governor cannot withhold assent.*”⁶³ The court emphasising the importance of fixed timelines for withholding assent held that “*the Constitution evidently have this provision in it containing the words ‘as soon as possible’, bearing in mind the importance which has been attached to the power of legislation, which squarely lies in the domain of the state legislature. The Governor cannot be at liberty to keep the Bill pending indefinitely without any action whatsoever*”⁶⁴. It also observed that, “*the Governor as the unelected Head of State would be in a position to virtually veto*

⁵⁹ Shivraj Singh Chouhan v. Speaker, Madhya Pradesh Legislative Assembly, 2020 SCC ONLINE SC 363

⁶⁰ *Id.*

⁶¹ Shivraj Singh Chouhan v. Speaker, Madhya Pradesh Legislative Assembly, 2020 SCC ONLINE SC 363

⁶² INDIA CONST. ART. 200

⁶³ *Id.*

⁶⁴ State of Punjab v. Principal Secretary to the Governor of Punjab, 2024 SCC 1 384

*the functioning of the legislative domain by a duly elected legislature by simply declaring that assent is withheld without any further recourse. Such a course of action would be contrary to fundamental principles of a constitutional democracy based on a Parliamentary pattern of governance.*⁶⁵” The court decision made it clear that, under Article 200, the governor's discretionary power must be exercised within the limits imposed by the constitutional values that stress the principles of parliamentary democracy and federalism. Again, the Supreme Court, in *State of Tamil Nadu v. Governor of Tamil Nadu*⁶⁶, reiterated that the governor's discretionary power under Article 200 is subject to constitutional restraints. The court held that the language of Article 200 makes it clear that there is a time limit on such power. The court observed that, “*The Governor must act within reasonable time limits: one month for assent or reservation based on ministerial advice, three months for withholding assent and returning the bill with a message, and one month for granting assent to a re-passed bill*”⁶⁷.” It was further observed that, “*the general rule that the Governor, in the Cabinet form of government envisaged by the Constitution, acts as a constitutional head performing all his functions and exercising all his powers on the aid and advice of the Council of Ministers, except in a limited area. This limited area of discretion, too, is provided by the Constitution under the specific provisions that permit such exercise.*” So, the withholding of assent in an unreasonable and capricious manner is not constitutionally admissible. In this case, the governor reserved ten bills for the president's consideration for an unduly long time, even after they were reconsidered by the state legislature and re-passed.

Recently, in 2025, the President referred 14 questions to the Supreme Court for interpretation of Articles 200 and 201, which deal with the Governor's discretionary powers to assent, withhold, or reserve Bills for consideration. The court held that, firstly, the governor “*is not bound by the aid and advice of the council of ministers while exercising the three options provided under Article 200.*”⁶⁸ Secondly, the governor must fulfil his constitutionally prescribed

⁶⁵ *Id.*

⁶⁶ *State of Tamil Nadu v. Governor of Tamil Nadu*, 2025 INSC 481

⁶⁷ *State of Tamil Nadu v. Governor of Tamil Nadu*, 2025 INSC 481.

⁶⁸ *In re: Assent, Withholding or Reservation of Bills by the Governor and the President of India*, 2025 INSC 1333.

function within a reasonable period. The court stated that, “*In glaring circumstances of inaction that is prolonged, unexplained, and indefinite, the Court can issue a limited mandamus for the Governor to discharge his function under Article 200 within a reasonable time period, without making any observations on the merits of the exercise of his discretion.*”⁶⁹ Thirdly, the court can “*only issue a limited mandamus directing the Governor to act within a reasonable time, without going into the merits of the decision made by the Governor.*”⁷⁰ And lastly, the courts “*cannot impose judicially prescribed timelines for the Governor’s actions under Article 200.*”⁷¹ The last point overturned the decision in the case of the *State of Tamil Nadu v. Governor of Tamil Nadu*, in which the court fixed timelines for the exercise of the governor's powers under Article 200. Table 1 below presents key findings regarding the landmark precedents.

TABLE NO 1: Highlighting the key findings in landmark precedents concerning gubernatorial overreach in India.

YEAR	CASE NAME	IMPACT ON GUBERNATORIAL ISSUES
1974	Shamsher Singh v. State of Punjab	- Limited discretionary powers, - Use discretionary powers subject to the principles of parliamentary democracy and ministerial responsibility
1977	State of Rajasthan v. Union of India	Report under Art. 356 is independent of ministerial advice, but it is subject to scrutiny.
1994	S.R. Bommai v. Union of India	- The Governor must act without bias and avoid subjective factors while making the report under Art. 356. - The floor test is a constitutionally preferred method for ascertaining majority support in the legislative assembly, unless contrary

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

		circumstances demand otherwise.
2006	Rameshwar Prasad v. Union of India	The Governor's report under Article 356 is subject to judicial review but only on limited grounds, such as mala fides or reliance on irrelevant grounds.
2016	Nabam Rebia vs Deputy Speaker, Arunachal Pradesh Legislative Assembly	- The Governor can summon, prorogue, or dissolve the Legislative Assembly under Art. 174 or the power under Art. 175(1). However, it must be done with the aid and advice of the Council of Ministers. - It is a settled principle that a governor can exercise his executive functions only with the aid and advice of the Council of Ministers. However, some powers are required by the express provisions of the Constitution or by necessary implication to be in the discretion of the governor.
2016	Union of India v. Harish Chandra Singh Rawat	- The floor test is the constitutionally mandated method for ascertaining a majority in the legislative assembly. - The Governor's discretionary power is limited and subject to the aid and advice of the Council of Ministers. So, he cannot interfere with the speaker's functions, who is a constitutional authority.
2020	Shivraj Singh Chouhan v. Speaker, Madhya Pradesh Legislative Assembly	- The governor has the power to order the floor test, either at the initial stage when the government is formed or at any time during the run. However, this power of the governor must not impinge on the speaker's power to disqualify members. - Also, the governor's power to order a floor test is subject to judicial review to scrutinise the objective considerations taken into account by the governor.
2023	State of Punjab v. Principal Secretary to the Governor of Punjab	The Governor has no power to pocket veto any bills, as it is beyond the scope of its discretionary power. It is limited by the constitutional values of parliamentary

		democracy and federalism. • The delay in legislative action is not appreciable, and it is held that ‘as soon as possible’ indicates that the governor cannot withhold assent unreasonably for an indefinite time.
2025	State of Tamil Nadu v. Governor of Tamil Nadu	• The decision provides fixed deadlines for exercising the discretionary powers under Art. 200. • It stated that the governor must take one month for assent or reservation based on ministerial advice, three months for withholding assent and returning the bill with a message, and one month for granting assent to a repassed bill.
2025	In re: Assent, Withholding or Reservation of Bills by the Governor and the President of India	• The governor is not bound by the aid and advice of the council of ministers while opting for the three options mentioned Art. 200. • The governor must fulfil his constitutionally prescribed function within a reasonable period • In case of inaction for a long time without any plausible reason, the court can issue a limited mandamus directing the Governor to act within a reasonable time, without going into the merits of the decision of the governor. • The court cannot impose judicially prescribed timelines for the Governor’s actions under Article 200

IV. Conclusion

“The Governor acts as a vital link between the Centre and the States, playing a significant role in maintaining harmonious Centre-State relations.”

By the Punchhi Commission, The Commission on Centre-State Relations

It can be concluded that the governor's role is dual. He is both the head of the state and the representative of the union in the state. He is the communication link between the union and the states. His impartial exercise of duty to maintain harmony between the union and the state is the bedrock of parliamentary democracy and cooperative federalism in India. The Constitution of India vested him with the executive functions of the state, which he has to perform with the aid and advice of the Council of Ministers. However, certain discretionary powers granted to him by the Constitution itself have recently become a source of political instability in India. These powers are exercised at his discretion, based on objective factors rather than subjective satisfaction, but the manner in which the governor of certain states has, on a few occasions, exercised them has raised questions about gubernatorial overreach. Nonetheless, the Supreme Court has clearly held in several notable cases that the Constitution grants the governor discretionary powers to exercise under exceptional circumstances, so the centre and the state cannot intrude into them. He is not obliged to follow the ministerial advice, but his exercise of discretion must be reasonable and within the constitutional limits. Any blatant violation of constitutional values will make his discretion subject to limited judicial review. The court also held that no fixed time limits can be introduced through judicial interpretations. Therefore, it is explicitly clear that the governor must exercise his discretionary powers within the constitutional boundaries, respecting the cherished ideals of parliamentary democracy and federalism, which are the foundational pillars of the democratic nation. The impartial and sincere exercise of powers by the governor is a beacon for the peaceful and prosperous co-existence of both the union and the states, leading to a bright future.