

INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION

[ISSN 2581-9453]

Volume 6 | Issue 4

2024

© 2024 International Journal of Legal Science and Innovation

Follow this and additional works at: <https://www.ijlsi.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for free and open access by the International Journal of Legal Science and Innovation at VidhiAagaz. It has been accepted for inclusion in International Journal of Legal Science and Innovation after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at International Journal of Legal Science and Innovation, kindly email your Manuscript at editor.ijlsi@gmail.com.

The Role of the Governor in Indian Federalism: A Comparative Study with Lieutenant Governors of Union Territories

VAGEESHA KUMRE¹ AND PRAKASH SINGH²

ABSTRACT

In the structure of Indian federalism the Governor holds a significant position and serves as the bridge between the central and state governments. This research aims to compare the role of state Governors with that of Lieutenant Governors in Union Territories (UTs). Governors in Indian states play crucial roles in legislative processes & exercises powers in areas such as law-making, state administration and emergency situations. On the other hand, Lieutenant Governors in UTs without legislative assemblies have a more pronounced executive role and operate under the direct supervision of the President of India. By examining their roles, the study highlights the varied administrative needs and governance models adopted in states and UTs and contribute to a deeper understanding of India's federal structure.

Keywords: President, Governor, Lieutenant Governor, Union Territories, State administration.

I. INTRODUCTION

Indian federalism, as established by the Constitution delineates the distribution of powers and responsibilities between the Union and State governments. Within this framework the Governor occupies a unique and important role which acts as a crucial link between the central and state authorities. The Governor's position while largely ceremonial carries significant constitutional powers that can influence state governance. This role is particularly intriguing when juxtaposed with the functions of the Lieutenant Governors in Union Territories where the balance of power tends to differ markedly. The Governor holds a significant position in the governance of Indian states and work as the constitutional head at the state level. This role ensures that the administration of each state is conducted according to the provisions of the Indian Constitution. The President of India appoints the Governor with the intention to maintain a balanced distribution of power and uphold the constitutional framework within the

¹ Author is an Advocate at Delhi High Court, India.

² Author is a student at Narayan School of Law, Gopal Narayan Singh University, India.

states.

The Governor in Indian states is appointed by the President of India and holds office at the pleasure of the President. The constitutional provisions detailing the Governor's role are enshrined in various articles of the Indian Constitution. These articles outline the Governor's powers which include summoning, proroguing and dissolving the state legislative assembly as well as the power to grant pardons, reprieves, respites or remissions of punishment.

The Lieutenant Governors (LG) acts as the executive head. The LG's powers are particularly significant in Union Territories with legislative assemblies. In these territories, the LG's authority often extends beyond ceremonial duties which encompass substantial administrative and executive functions.³

(A) Review of Literature

In the structure of Indian federalism the roles of Governors in states and Lieutenant Governors (LGs) in Union Territories (UTs) play crucial roles in governance albeit with distinct responsibilities and powers. Governors in states as mandated by Indian Constitution serve as ceremonial heads with significant executive powers. They oversee legislative processes, administer state affairs and intervene during political crises such as recommending President's Rule. This dual role as a bridge between the central and state governments underscores their pivotal position in upholding constitutional governance.

Conversely, LGs in UTs, governed operate as direct representatives of the President particularly in territories without legislative assemblies. Their executive authority encompasses governance, law enforcement and land administration is crucial for maintaining stability and adhering to national policies. The contrasting roles between Governors and LGs highlight the adaptive nature of federalism in India, addressing diverse administrative needs across states and UTs.

(B) Research Methodology

This research was conducted using secondary sources, which means that existing literature, documents and data were analyzed to explore the roles of Governors and Lieutenant Governors in Indian federalism. Secondary sources include books, academic journals, government reports and judicial decisions that provide valuable insights into the constitutional provisions and practical functioning of Governors in states and Lieutenant Governors in Union Territories

³ "Governor's Role in Indian Federalism," Ensure IAS Blog, <https://ensureias.com/blog/current-affairs/governor-s-role-in-indian-federalism> (last visited June 15, 2024).

(UTs).

II. CONSTITUTIONAL PROVISIONS AND POWERS OF THE GOVERNOR IN INDIA

The Indian Constitution requires each state to have a governor as stated in Article 153. Additionally, it stipulates that one person may be named governor of two or more states and allow for administrative efficiency when needed. The Governor's position as the state's constitutional head of state is established in this article. The Governor is granted the executive authority of the state by Article 154. The Governor may use these powers himself or through officers who report to him. This indicates that although the governor serves as the official head of state, the state government really administers the state while operating under his direction. Ensuring that the state's executive activities comply with the Constitution is the governor's responsibility in this regard. The office of the Governor in India as established by the Constitution of India plays an important role in the governance of the states. The Governor acts as the representative of the central government at the state level and is entrusted with various executive, legislative and discretionary powers to ensure the smooth functioning of the state government⁴.

According to Article 155 the Governor is appointed by the President of India who acts on the advice of the central government. This provision underscores the central government's influence in state matters and ensures that the Governor remains aligned with national policies while overseeing state affairs. Article 156 outlines the term of office for the Governor who holds office during the pleasure of the President. This effectively means that the Governor can be removed by the President at any time which ensures that the Governor's actions remain consistent with the central government's expectations. The standard term is five years but this can be curtailed by presidential discretion. Under Article 157, the qualifications for the office of Governor are specified. A person must be a citizen of India and at least 35 years old. This ensures that the individual appointed to this high office has the requisite maturity and understanding of national and state issues. Article 158 details the conditions of the Governor's office which emphasizes that the Governor should not hold any other office of profit, should not be a member of the legislature and is entitled to emoluments and allowances as determined by Parliament. This provision ensures the Governor's independence and impartiality in state matters.

The governor has a broad range of authority. In accordance with Article 161 the Governor may

⁴ "Constitutional Roles in Brief," Raj Bhavan Maharashtra, <https://rajbhavan-maharashtra.gov.in/en/constitutional-roles-in-brief/> (last visited June 20, 2024).

pardon, reprieve, respite or remit punishment in addition to suspending, remitting or commuting the sentence of any person found guilty of breaking a state law As per Article 200, the Governor holds a significant position in matters pertaining to legislation. Legislation passed by the state legislature may be approved or rejected by the governor who may also decide to hold off on signing legislation until the president reviews it. This ensures that state laws are in line with the interests of the country and the broader constitutional framework⁵.

When the state legislature is not in session the Governor may enact ordinances pursuant to Article 213 if the exigency of the situation demands it. The legislature must adopt these ordinances within six weeks of reassembly in order for them to stay in force and effect but otherwise they have the same authority and effect as laws passed by the legislature.

The Governor's discretionary powers are another important role of them. The Governor may act at his discretion in some situations such as appointing the Chief Minister when no party has a clear majority in the state legislative assembly and recommending President's control in the state under Article 356. This discretionary power is critical for preserving political stability and ensures that government follows constitutional values⁶.

III. LIEUTENANT GOVERNORS IN UNION TERRITORIES

In India, the Lieutenant Governors (LGs) play a crucial role in the administration of Union Territories (UTs). They are appointed by the President of India and serve as the constitutional heads of these territories The President of India appoints Lieutenant Governors to oversee the administration of union territories. This post is similar to that of governors in states although the scope and jurisdiction vary according on the precise constitutional provisions that apply to each UT. The appointment of LGs emphasizes the President's responsibility for ensuring effective governance and conformity with national legislation in these territories.

Article 239 of the Indian Constitution provides the foundational principles for the administration of Union territories (UTs). It vests the President of India with the authority to administer each UT through appointed administrators. These administrators often designated as Lieutenant Governors (LGs) act as the President's representatives to ensure effective governance and administration in these territories. The scope and extent of their powers are delineated by regulations framed under this article, which aim to maintain uniformity in governance across different UTs. Article 239A introduced by the 14th Constitutional

⁵ "Powers and Functions of Governor," Next IAS Blog, <https://www.nextias.com/blog/powers-and-functions-of-governor/> (last visited June 21, 2024).

⁶ Adarsh Singh Thakur, "Position of Governor Under the Constitution," iPleaders Blog, <https://blog.ipleaders.in/position-of-governor-under-the-constitution/> (last visited June 22, 2024).

Amendment Act of 1962 introduces special provisions for certain UTs like Goa, Daman and Diu, Pondicherry and later Mizoram. This article empowers Parliament to create a Legislative Assembly, a Council of Ministers or both for these UTs through specific legislation. Unlike UTs governed solely under Article 239 those covered by Article 239A enjoy a greater degree of autonomy and local representation. The LG in these territories plays a dual role – as the representative of the President and as a facilitator of local governance through the elected assembly and council of ministers⁷.

Article 240 grants the President of India the authority to promulgate regulations for the peace, progress and good governance of specific Union territories listed therein. These territories include Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli, Daman and Diu, and others as specified. Regulations framed under Article 240 have the force of law equivalent to Acts of Parliament and thereby enable effective governance and administration tailored to the unique needs of each UT. The regulations under Article 240 cover a wide spectrum of administrative, legislative and executive functions essential for the governance of UTs. They encompass matters such as the establishment of administrative bodies, allocation of resources, management of public services and implementation of developmental policies. By exercising powers under Article 240 the President ensures that UTs receive governance that is responsive to local contexts while adhering to national laws and constitutional provisions⁸.

Articles 239, 239A and 240 of the Indian Constitution collectively define the governance framework for Union territories and balance the central authority with provisions for local autonomy and representation.

(A) Roles and Functions of Lieutenant Governors

The roles and functions of Lieutenant Governors in Union Territories encompass a wide array of administrative responsibilities:

- **Administrative Head:** - LGs serve as the administrative heads of their respective UTs and exercise executive powers delegated to them by the President or through regulations framed under Article 240. They oversee matters of governance, law and order, land administration and other executive functions critical to the UT's development and stability.
- **Executive Authority:** - In UTs with elected Legislative Assemblies like Delhi and

⁷ "Lt. Governors & Administrators of the Union Territories of India," Unacademy, <https://unacademy.com/content/bank-exam/study-material/general-awareness/lt-governors-administrators-of-the-union-territories-of-india/> (last visited June 26, 2024).

⁸ *Ibid*

Puducherry LGs play a crucial role in overseeing the implementation of laws and policies. They ensure that the administration functions smoothly while upholding constitutional principles and central directives.

- **Relationship with Council of Ministers:** - The relationship between LGs and Councils of Ministers in UTs with legislatures is governed by intricate constitutional provisions. While the Council of Ministers is responsible for policy formulation and implementation LGs act as a check and balance ensured that the decisions align with national interests and constitutional provisions.
- **Discretionary Powers:** - LGs exercise discretionary powers in matters where constitutional provisions or national interests require intervention. Disputes or differences between the LG and Council of Ministers can be referred to the President for resolution which underscores the LG's role as a custodian of constitutional balance and governance⁹.

IV. CASE ANALYSIS

1. Government of NCT of Delhi v Union of India

The case of Government of the National Capital Territory of Delhi v Union of India deals with complex constitutional and administrative issues pertaining to Delhi's National Capital Territory (NCT). Article 239AA of the Constitution, which gives Delhi a special status with an elected Legislative Assembly and Council of Ministers similar to states but with exclusions address public order, police and land which is crucial to this case in terms of interpretation and implementation.

Delhi's journey from a Union Territory to the NCT with partial statehood began with the 69th Amendment Act of 1991, following recommendations by the S. Balakrishnan Committee. This amendment aimed to provide Delhi with greater autonomy in local governance while maintaining its status as the national capital. Article 239AA introduced a Legislative Assembly empowered to legislate on matters in the State and Concurrent Lists except those related to public order, police, and land which remained under the domain of the Union government. The LG as the Administrator plays a crucial role in Delhi's governance structure with powers delineated by constitutional provisions and subsequent judicial interpretations. Control over administrative services, such as the hiring, posting and transfer of bureaucrats is at the core of the case. In 2018, the Supreme Court made a significant ruling by highlighting the Lieutenant

⁹"Lieutenant Governor: Functions, Power, and Role," Lawyers Club India, <https://www.lawyersclubindia.com/articles/lieutenant-governor-functions-power-and-role-14978.asp> (last visited July 1, 2024).

Governor's (LG) need to follow the Council of Minister's guidance and recommendations unless there are specific exceptions specified in Article 239AA. But once the Government of NCT of Delhi (Amendment) Act, 2021 was passed the issues surfaced since it attempted to restrict the administrative authority of the Delhi Legislative Assembly. The Delhi government filed a court challenge, questioning the amendment's validity and asserting its inherent role in local governance¹⁰.

A major turning point in India's constitutional jurisprudence was reached on May 11, 2023, when the Supreme Court upheld the importance of elected governments in democratic governance. The Court affirmed the Delhi government's control over administrative services, highlighting the fact that the LG is obligated to follow the Council of Minister's guidance and recommendations for the majority of administrative tasks. In addition to resolving the immediate conflict this ruling established a standard for Union Territory government and made clear the proper ratio between federal principles and local sovereignty. The Supreme Court's decision highlighted the constitutional principles of federalism and separation of powers which is crucial in defining the roles of elected governments and centrally appointed administrators in Union Territories. The verdict underscored the importance of maintaining a harmonious balance between local autonomy and central oversight and ensures effective governance and policy implementation. By affirming the elected government's authority in administrative matters the Court reinforced the democratic ethos embedded in India's constitutional framework.

The Supreme Court's ruling has broad ramifications that affect not only Delhi's governance structure but also those of other Union Territories vying for increased autonomy. By defining roles and responsibilities the verdict improves administrative efficiency and makes governance and policy execution easier¹¹.

Additionally it fortifies the constitutional barriers to executive overreach, guaranteeing elected governments the freedom to carry out their responsibilities without unwarranted intervention. The decision has important political repercussions since it upholds the fundamental tenets of democratic governance and the rule of law. The case has profound political ramifications and shapes the dynamics between the central government and elected governments in Union Territories. It establishes a precedent for resolving similar disputes in other regions which

¹⁰ "Delhi Government Ought to Have Control Over Administrative Services; Lieutenant Governor Bound by Its Decision, Says Supreme Court," NDTV, <https://www.ndtv.com/india-news/delhi-government-ought-to-have-control-over-administrative-services-lieutenant-governor-bound-by-its-decision-says-supreme-court-4024357> (last visited July 2, 2024).

¹¹ *Government of NCT of Delhi v Union of India* CA 2357/2017

provides clarity on the limits of executive authority and the scope of legislative powers under Article 239AA. Practically the decision promotes transparency and accountability in governance & enables the elected representatives to effectively serve their constituents and implement policies aligned with local needs. By upholding the supremacy of elected governments in most administrative matters the Court reaffirmed its commitment to upholding constitutional values and democratic principles.

2. Puducherry CM vs. LG Kiran Bedi

The case of Kiran Bedi's tenure as the Lieutenant Governor (LG) of Puducherry highlights significant constitutional and administrative challenges marked by continuous conflicts with the then Chief Minister V. Narayanasamy. The crux of the disputes revolved around the extent of powers vested in the LG versus those of the Chief Minister and the Council of Ministers.

On May 29, 2016, Kiran Bedi a former member of the Indian Police Service (IPS) was appointed as the LG of Puducherry. Tensions between her and Chief Minister V. Narayanasamy emerged almost immediately. Throughout her term Kiran Bedi was known for her proactive approach to government which she felt was beneficial for the Union Territory (UT). But Narayanasamy constantly accused her of going beyond what the constitution allowed.

The constitutional framework for Union Territories like Puducherry is outlined in Articles 239 and 239A of the Indian Constitution. Article 239 mandates that the President administer Union Territories through an Administrator who is designated as the LG. Article 239A, introduced by the Fourteenth Amendment in 1962, allows Parliament to create legislatures and councils of ministers for certain UTs, including Puducherry. The Government of Union Territories Act of 1963 elaborates on the functions and responsibilities of the LG and the elected government. Section 44 of this Act requires the Chief Minister and the Council of Ministers to assist and advise the LG, particularly when the latter is carrying out functions under Parliament's legislative authorities¹².

The Supreme Court issued a decision that marked a turning point in the ongoing conflict. While this decision largely addressed the power struggle between Delhi's LG and its Chief Minister, it also had far-reaching repercussions for Puducherry. The Supreme Court determined that the LG must follow the Council of Minister's help and advice, except in cases where she is required

¹² "How Kiran Bedi Fought Her Puducherry Battle with Narayanasamy," Times of India, <https://timesofindia.indiatimes.com/india/how-kiran-bedi-fought-her-puducherry-battle-with-narayanasamy/articleshow/81083589.cms> (last visited July 5, 2024).

to act at her discretion¹³. This decision was intended to ensure that the elected government had a voice in the administration, preventing the LG from acting autonomously. The enactment of the Government of NCT of Delhi (Amendment) Act, 2021 further complicated affairs. Although this Act was particularly directed on the Delhi government, Puducherry felt the effects of it as well. The change said that the "Government" in Delhi referred to the LG in an effort to make the division of powers more clear. As a result the elected administration in Delhi was essentially given less authority, which caused worries about a similar fall in power in Puducherry.

Throughout Kiran Bedi's term the Chief Minister Narayanasamy make various allegations against her. In June 2017, he formally ordered Kiran Bedi to quit interfering with the day-to-day operations of the government while citing constitutional rules outlining the LG's powers and restrictions. He emphasized that under the Government of Puducherry's Rules of Business the LG was obliged to operate with the assistance and advice of the Council of Ministers. V. Narayanasamy's grievances included Kiran Bedi's alleged blocking of disinvestment projects hinders financial allocations for farmers and creates obstacles in the provision of free education for Scheduled Caste (SC) students. He argued that Bedi's actions were not in line with the expectations of her role as an LG and that she was behaving in a dictatorial manner.

From the beginning Kiran Bedi was adamant about not being a mere "rubber stamp" LG. She believed her proactive measures were necessary to prevent administrative lapses and ensure justice. Kiran Bedi argued that her interventions were crucial to maintaining accountability within the administration. She did not want to merely endorse decisions without scrutiny or allow the misuse of public funds. Kiran Bedi's approach included summoning senior officials to Raj Bhavan for discussions seek detailed reports and issuing directives. Her hands-on style extended to public engagements such as regulating traffic and checking compliance with safety regulations. This level of activism was seen by V. Narayanasamy as overstepping her constitutional role¹⁴.

The friction between Bedi and Narayanasamy reached its peak with the appointment of three BJP members to the Puducherry Legislative Assembly. On July 4, 2018, Bedi administered the oath of office to V. Saminathan, K.G. Shankar and S. Selvaganapathy. This move was criticized by the Congress, DMK and other political parties who saw it as an undemocratic attempt to

¹³ Union of India v K. Lakshminarayanan SLP (C) 12072/2019

¹⁴ "Puducherry Power Tussle: Narayanaswamy's Fresh Stir Against Kiran Bedi," Indian Express, <https://indianexpress.com/article/cities/chennai/puducherry-power-tussle-narayanaswamy-fresh-stir-against-kiran-bedi-7138586/> (last visited July 9, 2024).

strengthen BJP's presence in the Assembly. V. Narayanasamy and his allies argued that the manner in which these nominations were handled violated democratic norms and conventions. The timing of the ceremony held just before a scheduled hearing in the Madras High Court added to the controversy.

The legal dispute between the LG and the Chief Minister was resolved by the Madras High Court on April 30, 2019. The Court ruled that the LG must follow the Council of Ministers' advice and not interfere with the government's day-to-day operations. This decision upheld the grounds established by the Supreme Court in the Delhi case and overturned the Union Ministry of Home Affairs communications that expanded the LG's authority¹⁵.

V. COMPARISON BETWEEN GOVERNOR AND LIEUTENANT GOVERNORS

Governors in Indian states and Lieutenant Governors (LGs) in Union Territories (UTs) both play important administrative roles, although their powers and responsibilities differ significantly according to the constitutional rules governing them.

Governors are appointed by the President of India, serve as the ceremonial heads of states but possess substantial constitutional powers. Their duties include summoning, proroguing and dissolving the state legislative assembly as well as granting pardons and reprieves. They act on the advice of the state's Council of Ministers but have discretionary powers in specific situations such as appointing a Chief Minister when no party has a clear majority. This dual role helps maintain the balance between the state and the central government which ensures that state administration adheres to constitutional norms. Lieutenant Governors are also appointed by the President and serve as the administrative heads of UTs where the central government retains greater control. The powers of LGs vary based on whether the UT has a legislative assembly.

Governors often encounter political pressures from both the state and central governments. Their discretionary powers can lead to accusations of bias especially during political crises such as hung assemblies. Additionally, the Governor's role as the chancellor of state universities and their involvement in tribal areas under the Sixth Schedule adds layers of complexity to their administrative responsibilities. Lieutenant Governors in UTs with legislative assemblies face significant challenges in balancing their administrative authority with the aspirations of the elected governments¹⁶. The conflicts between Delhi's LG and the

¹⁵ "Kiran Bedi's Ignominious Exit as Puducherry LG Helped BJP," The Wire, <https://thewire.in/politics/kiran-bedi-ignominious-exit-as-puducherry-lg-help-bjp> (last visited July 12, 2024).

¹⁶ Dhruva Vig, "What is the Difference Between Governor and Lieutenant Governor?" Law Insider, <https://www.lawinsider.in/columns/what-is-the-difference-between-governor-and-lieutenant-governor> (last

Delhi government illustrate the ongoing tensions in power dynamics, where the LG's authority in areas like police and land clashes with the local government's administrative ambitions. In Puducherry, the frequent standoffs between the LG and the Chief Minister highlight the difficulties in maintaining a functional governance structure where both entities vie for control.

VI. CONCLUSION

The functions of Governors and Lieutenant Governors in India while based on the Constitution demonstrate the delicate interplay between federalism and central oversight. Governors as constitutional presidents of states, act as key bridges between the Union and state governments and ensures that level governance is consistent with the national framework. Their powers while typically ceremonial bear enormous weight in legislative, executive and discretionary roles. This duty is critical in maintaining the balance of power and ensuring the state's compliance with constitutional demands.

In contrast, Lieutenant Governors in Union Territories embody a more direct representation of central authority. Their powers especially in territories with legislative assemblies like Delhi and Puducherry extend beyond ceremonial functions to substantial administrative and executive responsibilities. The dynamics in these territories often highlight the tension between local autonomy and central control, as seen in the cases of Delhi and Puducherry. The roles of Governors and Lieutenant Governors reflect the complex yet flexible nature of Indian federalism. Their functions and powers are tailored to address the diverse administrative needs of states and Union Territories, respectively. The ongoing evolution of these roles highlights the dynamic nature of Indian governance, continually striving to balance local autonomy with the overarching framework of national unity.
