

RAJ BHAVAN NEEDS RADICAL REFORMS

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SFI workers put up a banner against Kerala Governor Arif Mohammed Khan in front of the Kerala University headquarters at Palayam, in Thiruvananthapuram. | Photo Credit: The Hindu

The Governor of Kerala has been in the news for the wrong reasons. During his recent visit to the Calicut University campus, he instructed the police to remove posters put up against him. He termed the activists of the Students' Federation of India "criminals" and accused the Chief Minister of "sponsoring" them. After his visit, in a clear breach of protocol, he toured Kozhikode without any previous announcement. As such episodes are becoming more common, it is time to think about the behaviour of Governors in Opposition-ruled States and to understand the legal consequences of such aberrations.

The Constitution cannot be expected to deal with the individual behaviour of public functionaries; it only talks of the functions, powers, and duties of Governors. However, the notion of constitutional morality should govern Governors in their public conduct. In [NCT of Delhi v. Union of India \(2018\)](#), a Constitution Bench of the Supreme Court emphasised the need to identify the "moral values of the Constitution" based on a notion of "constitutional culture". It said that the "constitutional morality places responsibilities and duties on individuals who occupy constitutional institutions and offices". Even while acting as Chancellor, Mr. Khan continues to be Governor. Whether his conduct reflects constitutional morality is an open question.

Article 361 of the Constitution provides only a limited and conditional immunity for the Governors. It says that Governors shall not be answerable to any court for the exercise and performance of the powers and duties of their office or for any act done or purported to be done by them in their official capacity. This does not mean that Governors are not liable for their misbehaviour unconnected with their official duty. In [Rameshwar Prasad v. Union of India \(2006\)](#), after finding that the Governor abused power in recommending Presidential rule in Bihar, the Supreme Court said that the motivated and whimsical conduct of the Governor is amenable to judicial review. Yet, the question of whether Governors can claim immunity for extra-constitutional gestures and utterances was not a matter in issue in Rameshwar Prasad. However, the Court said that "right persons" should be chosen as Governors for maintaining "the sanctity of the post".

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Questions relating to disparaging comments by public functionaries came up for consideration before the Supreme Court in [Kaushal Kishor v. State of Uttar Pradesh \(2023\)](#). The Court said

that the freedom of expression of public functionaries could not be curtailed other than by way of the “reasonable restrictions”, as permitted by Article 19(2) of the Constitution. In the context of ministers, Justice B.V. Nagarathna said that if the statement by the public functionary is not consistent with the views of the government, it is attributable to the minister personally and they can be proceeded against. While the majority opinion varied from Justice Nagarathna’s view on the method of enforcement of fundamental rights against non-state actors, the personal liability of public functionaries on matters unconnected with their public duty was not a topic of disagreement. To illustrate, if a crime is committed by a public functionary, there is no statutory or constitutional immunity for them. Offences such as defamation could be committed by a public functionary as well, when the act is unconnected with or is in apparent conflict with their official duty.

The Sarkaria Commission Report (1988) lamented that “some Governors have failed to display the qualities of impartiality and sagacity expected of them”. It added that “many Governors, looking forward to further office under the Union or [an] active role in politics after their tenure came to regard themselves as agents of the Union”. Since then, the situation has only worsened. The Commission’s recommendation that the “(Governor) should be a detached figure and not too intimately connected with the local politics of the State” remains wishful thinking.

The Justice M.M. Punchhi Commission report (2010) said that “to be able to discharge the constitutional obligations fairly and impartially, the Governor should not be burdened with positions and powers which are not envisaged by the Constitution.” It said that conferring statutory power on Governors by posting them as chancellors of the universities will have the potential to expose Raj Bhavan to “controversies or public criticism”. In Kerala, the State Assembly passed a Bill to abolish the Governor’s chancellorship. The Governor did not give assent to it and referred the Bill, along with others, to the President. This happened after he sat on the Bills for a long time and after the government moved the Supreme Court praying for gubernatorial assent. It was in this context that he visited the University as Chancellor, as against the will of the Assembly. This action lacked democratic legitimacy.

Future regimes at the Centre will have to consider amending Article 155 of the Constitution related to appointment of Governors by ensuring consultation with the Chief Minister, as suggested by the Sarkaria report. An independent body for selecting the Governor with a reasonably significant role for the Chief Justice of India also might improve the quality of the selection process. Also, there needs a legal prohibition against further rehabilitation of Governors in any official capacity. Raj Bhavans require systemic changes.

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