

GOVERNOR'S DISCRETION

Relevant for: Indian Polity & Constitution | Topic: Governor

A.G. Perarivalan. File | Photo Credit: [C. Venkatachalapathy](#)

The discretionary powers of the Governor are once again at the centre of a fresh controversy to decide on the remission of seven convicts in the Rajiv Gandhi assassination case. A Supreme Court Bench led by Justice Ranjan Gogoi, while disposing a writ petition, recorded that the petitioner, A.G. Perarivalan, had filed an application before the Tamil Nadu Governor and that the “authority concerned will be at liberty to decide the said application as deemed fit”. Following this, the Tamil Nadu Cabinet adopted a resolution recommending that the Governor release the seven convicts under Article 161 of the Constitution.

Subsequently, Raj Bhavan issued a press release explaining that the case involves “examination of legal, administrative and Constitutional issues” and “necessary consultation may be carried out, when required, in due course”. This communique seems to have been drafted to give the impression that the Governor is meticulously assessing the merits of the issue at hand, but it does not mention whether the Governor’s office is vested with any such powers to apply his mind and exercise his discretion under the Constitution. Article 161 of the Constitution provides the Governor with the power to “remit or commute the sentence of any prisoner”. The Governor’s decision will be subject to judicial review by the constitutional courts. Nevertheless, the immediate question is whether there is an independent, discretionary power vested with the Governor with regard to Articles 161 and 163 of the Constitution.

In the view of the Supreme Court, speaking through a five-judge Bench in *Nabam Rebia and Bamang Felix v. Deputy Speaker* (2016), the discretionary power of the Governor is extremely limited and entirely amenable to judicial review. Time and again, the courts have spoken out against the Governor acting in the capacity of an “all-pervading super-constitutional authority”. Even when the exercise of discretion is concerned, a seven-judge Bench of the apex court in *Samsher Singh v. State of Punjab* (1974) had held that the Governor may do so only “in harmony with his Council of Ministers”. To do so, the Governor is precluded from taking a stand against the wishes of the Council of Ministers.

The area being traversed in this case is alien to our Constitution, not having envisaged a situation where the Governor exercises his power under Article 161 against the express recommendation of the Council of Ministers. Such a decision will result in a tragic evisceration of the Constitution and its founding principles such as the federal structure, Cabinet responsibility and accountable governance. This may also be interpreted as the Governor having lost faith in the State government with regard to the performance of its executive functions. Either way, to stay true to the spirit of the Constitution, the Governor should desist from conferring discretionary powers to his office where there are none.

The writer is an advocate and a DMK spokesperson

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Last week Ram Kadam, a BJP MLA from Maharashtra, told the men in an audience that if they were interested in women who didn’t reciprocate the feeling,

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