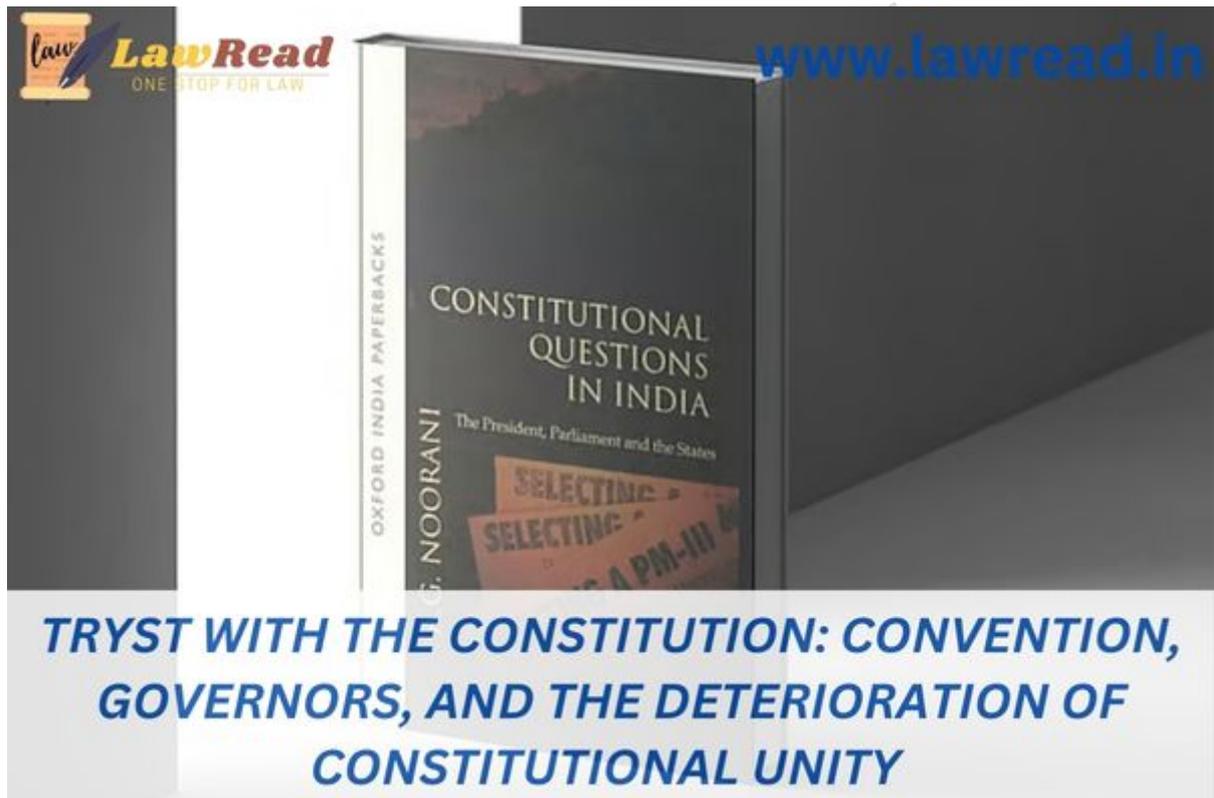


News

Tryst with the Constitution: Convention, governors, and the deterioration of constitutional unity



Governors have been able to use their discretion in situations where it is lacking or in ways that put pressure on the constitutional framework due to the lack of codified advice.

The uneasy relationship between constitutional text, convention, and political practice has once again been highlighted by recent events in Tamil Nadu, Karnataka, and Kerala, where governors refused to read the address prepared by the elected state governments at the start of the legislative session.

These incidents pose deeper constitutional concerns regarding the expectations of

cooperation ingrained in India's constitutional system, even though they initially seem to be symbolic or political disputes.

The Governor must address the legislative assembly at the start of each year's first session and following a general election, according to Article 176 of the Constitution. This address has traditionally been regarded by constitutional practice as the official declaration of the elected government's policies and legislative agenda. The Council of Ministers prepares the speech, which the Governor, as the State's constitutional leader, delivers with their assistance and counsel. This custom is essential to the operation of responsible government and is neither accidental nor decorative.

Therefore, deviating from this established practice goes beyond simple etiquette violations. They amount to a reluctance to carry out a constitutionally mandated function in the way that the Constitution specifies. More significantly, they indicate a breakdown in the cooperative culture between the elected executive and the governor that the Constitution envisions.

The cooperation required by the Constitution

It is common to characterize the Governor's constitutional duty as having little discretion. However, this characterization is not comprehensive. The constitutional framework distinguishes between multiple types of discretion, each functioning within well defined constitutional bounds, rather than completely eliminating governmental authority.

Situations of independent discretion with concrete constitutional ramifications, such the selection of a chief minister in the absence of a clear majority or the choice to reserve a bill for the President's consideration, are at one extreme of the spectrum. In these situations, the Governor must exercise autonomous discretion while adhering to judicially established criteria and constitutional principles. On the other end of the spectrum are roles in which the Governor has almost no discretion and only follows the Council of Ministers' guidance. This last group includes the Governor's address under Article 176.

A third, frequently disregarded category is situated between these two extremes: discretion based on cooperation and comity. Articles 167 and 175 become important in this context. Neither unilateral action nor veto-like powers are granted to the Governor under these clauses. Rather, they are intended to help the Governor and the elected executive communicate, confer, and engage in institutional conversation.

The Governor may address the House or deliver messages to it regarding bills or other issues that are pending before the legislature under Article 175. The method of participation that this law prescribes is more significant than the authority it grants. It acknowledges that the governor may have questions or need clarification in order to carry out their responsibilities more effectively, but it does so through communication that is authorized by the constitution rather than confronting the public or interfering with the legislative process.

This framework is complemented by Article 167, which requires the Chief Minister to convey Council of Ministers decisions and provide information requested by the Governor. When taken as a whole, these clauses show a constitutional framework that encourages communication and collaboration rather than conflict.

The frailty of convention

These recent events demonstrate how much the constitutional system depends on custom. The text does not specifically state that the governor must read the address prepared by the elected administration. Rather, it is upheld by long-standing constitutional practice that was passed down from the Westminster tradition.

It's interesting to note that this convention was added by the Drafting Committee after it was left out of Sir Benegal Narsing Rau's initial draft of the Constitution. This provenance is made clear in the minutes of the Drafting Committee meeting on January 24, 1948. They document:

"The Committee has added this clause because it believes it will be helpful in our Constitution as well. It is based on practice that is common in the British Parliament."

In this regard, British practice is clear-cut. The King's (or Queen's) speech announcing the government's legislative agenda is a key component of the State Opening ceremony, which kicks off every parliamentary session. The government drafts the speech, and the cabinet approves it. There is no historical evidence that the king has ever declined to make the speech or unilaterally changed its final content after it was accepted by the cabinet, even if it is likely that recommendations or observations were communicated to the government during the planning stage.

The Governor's role is consequently restricted because Article 176 is specifically modeled after Westminster practice. During the planning phase, the governor may communicate with the state government, asking questions or voicing concerns. The elected administration,

however, has the last say over the speech's substance, and the governor is required by the constitution to deliver it. The challenge, however, is that the Constitution relies on custom rather than explicitly stating this duty.

This kind of reliance on tradition is not unusual. A number of facets of constitutional government function in an environment where established practice complements the wording of the constitution. Even in cases when conventions are not strictly enforceable, courts have consistently recognized their constitutional significance. Conventions, however, are only as strong as the institutional resolve to uphold them, as recent events have shown.

The Constitution's framers were well aware of this vulnerability. The establishment of a "***Instrument of Instructions***" for Governors was seriously considered during the Constituent Assembly deliberations. In the same way that the Directive rules direct legislative and executive action, this text would have defined rules controlling the performance of governor powers. Surprisingly, though, this suggestion was dropped at the end of the proceedings. This was covered in a previous column of mine.

Dr. Ambedkar justified this ruling on two main grounds: first, that the instrument would not be enforceable and would therefore be of little use. Second, formalized instructions were not required because of the Governor's restricted discretionary power. This logic seems overly hopeful in light of constitutional experience. By relying on constitutional silences and ignoring uncodified conventions, practice has demonstrated that even administrations with limited formal powers can wield enormous influence. In certain cases, the lack of written guidelines has allowed governors to exercise discretion where none exists or to use it in ways that conflict with the constitutional framework.

Final thoughts

The current occurrences are especially worrisome because they are not unique. They are a part of a larger trend in which governor behavior has become a subject of political contestation, whether it is in regard to public comments on governmental activity, legislative summoning, or bill assent. When considered separately, each case may be justified on specific reasons. When combined, they point to a departure from the institutional comity required by the Constitution.

There are real repercussions to this change. It causes tension between constitutional offices, encourages needless litigation, and takes focus away from important governance. More importantly, it upsets the equilibrium between constitutional supervision and democratic responsibility. The Governor runs the potential of becoming a constitutional bottleneck despite being intended as a constitutional link between the Union and the State executive.

All of this does not imply that governors have to serve as passive conduits for the will of the government. According to the Constitution, their duties include obtaining information, providing advice, and, under certain conditions, using judgment. However, that position is not flexible; it is organized. It must be upheld by a dedication to institutional restraint and exercised through the channels specified by the constitution.

Sardar Patel had fiercely responded in the early days of the Assembly when asked to promise that an Instrument of Instruction would be included in the Constitution.

It has been stated that the arrival of a schedule is not certain. It has the same level of assurance as the house meeting tomorrow.

Patel's demand seems prophetic in retrospect. It demonstrated a practical understanding of the limitations of depending just on unwritten customs and constitutional good faith to maintain responsible governance. With the benefit of constitutional experience, the Drafting Committee's later decision to omit such an instrument—preferring convention over codification—has exposed its flaws and deserves further scholarly scrutiny.

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Opinions are subjective.