

AS INTRODUCED IN THE RAJYA SABHA
ON THE 7TH FEBRUARY, 2025

Bill No. LXVI of 2024

THE CONSTITUTION (AMENDMENT) BILL, 2024

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BILL

further to amend the Constitution of India.

WHEREAS it is expedient to reinforce the principles of constitutional governance and uphold the integrity of executive authority within the framework of the Constitution;

AND WHEREAS it is imperative to delineate the roles and responsibilities of Governors, ensuring their adherence to constitutional norms.

BE it enacted by Parliament in the Seventy-fifth Year of the Republic of India as follows: —

1. (1) This Act may be called the Constitution (Amendment) Act, 2024.
(2) It shall come into force at once.

Short title and
commencement.

- 5 2. In article 158 of the Constitution, after clause (2), the following new clause shall be inserted, namely:—

Amendment of
article 158.

“2A. The functions of the Governor shall be confined to the powers

provided for in this Constitution, and under no circumstances shall the Governor be bestowed with any extra-constitutional position or authority pursuant to any law made by Parliament or the Legislature of a State, or otherwise, including, but not limited to, serving as Chancellor of Universities, save as otherwise explicitly provided for in this Constitution. 5

Provided that, notwithstanding anything inconsistent therewith contained in any other law, rules or regulations for the time being in force, the Chief Ministers of States, with the aid and advice of the Council of Ministers, shall perform the functions of such extra-constitutional roles hitherto performed by the Governors until necessary amendments in conformity to this clause have been made in the corresponding statutes, rules or regulations, wherever necessary, as the case may be.”. 10

STATEMENT OF OBJECTS AND REASONS

The enduring tradition of Governors presiding over Universities as Chancellors resonates with the echoes of a bygone British legacy. This practice traces back to the 'Despatch of 1854 on the General Education in India' by Sir Charles Wood, then President of the Board of Control, advocating for the establishment of Universities in India, envisioning a hierarchical structure comprising Chancellor, Vice-Chancellor, and a body of Fellows forming a Senate. A pivotal tenet enshrined within the Wood's Despatch was that the 'offices of Chancellor and Vice-Chancellor will naturally be filled by persons of high station, who have shown an interest in the cause of education...'. Following this suggestion, the Governor-General decided to assume to himself the mantle of Chancellorship at the University of Calcutta, while the Governors of Bombay and Madras assumed similar roles at the Universities in their respective presidency towns. These three universities were accordingly established in 1857 through separate legislations passed by the Legislative Council of India.

In the post-independence era, the establishment of State Universities followed suit, mirroring these precedents, often enshrining the Governor as the *ex-officio* Chancellor through legislative fiat. However, a profound shift transpired in the post-independence era, as the Governor became a constitutional authority. Following independence, a Committee chaired by Dr. S. Radhakrishnan examined this matter and observed that the practice of the Governor being a Chancellor had worked well in States with only one University. The Commission left it to the States to decide the appropriateness of the Governor assuming the responsibility of Chancellor, especially if the State had multiple Universities.

In the nascent years of our Republic, the harmony between Governors serving as Chancellors and State Governments remained largely unmarred, fostered by a political milieu where a singular party held sway both at the national and state levels. However, in the later decades, the tranquil waters were stirred by the emergence of multiple political parties, sometimes precipitating discord between these erstwhile harmonious entities. The inability of the elected State Governments to effectively supervise its own Universities has engendered myriad challenges in the overarching administration. Complications arise when the Governor, in the capacity of Chancellor, diverges from the advice of the Council of Ministers. While Justice R.S. Sarkaria Commission opined that there is no obligation on the Governor, in his capacity as Chancellor, to act on ministerial advice under Article 163(1) of the Constitution, it nonetheless underscored the widespread criticism against the use of discretion by some Governors in nominating members of a University Council or University functionary, in his capacity as Chancellor.

Justice V.R. Krishna Iyer eloquently characterized the offices of the President and the Governors as 'functional euphemisms', implying they should act solely upon ministerial advice. In *Maru Ram vs. Union of India* (1980), Justice Krishna Iyer wrote: "*The President and the Governor, be they ever so high in textual terminology, are but functional euphemisms promptly acting on and only on the advice of the Council of Ministers save in a narrow area of power.*" However, in the realm of practicality, Governors assuming Chancellorship roles have of late veered away from this sacred principle, particularly in cases marked by political discord between the Central and State Governments. In response, several State Governments have embarked upon legislative endeavours aimed at divesting Governors of their *ex-officio* Chancellorship, citing apprehensions over potential political bias. However, the response to such State legislative actions is far from uniform. While Bills passed by certain States received the nod of approval from Governors, others found themselves in limbo as some Governors chose to withhold their assent or referred them to the President for consideration. A striking illustration lies in the case of the Gujarat Universities Laws (Amendment) Bill,

2013, which effectively divested the Governor of all Chancellorship powers, and received the Governor's assent in 2015. However, the destiny of similar bills, promulgated by various other States such as Kerala, unfolds along divergent paths where the Governors have either chosen to withhold their assent or reserve the Bills for the consideration of the President, reflecting the nuanced complexities inherent in the interplay between constitutional mandates and practical governance.

The concept of having Governors as *ex-officio* Chancellors is merely a convention enshrined within the founding statutes, as previously elucidated, and therefore, need not be misconstrued as an inherent entitlement and therefore, negating this concept should not be construed as diminishing or dismantling the authority of the Governors.

The Governor, devoid of an elected mandate, assumes office as an appointee of the President, and takes the Constitutional oath to preserve, protect and defend the Constitution and the law. The Governor functions as a Chancellor in pursuance of a statute in relation to the affairs of the University, notwithstanding that he holds the Chancellorship in an *ex-officio* capacity. Apparently, the immunity given to the Governor under Article 361(1) of the Constitution does not extend to the exercise of powers and duties associated with this role. This discrepancy has precipitated a disconcerting scenario wherein Governors are entangled in legal disputes as Chancellors, further compounded by allegations of partiality or overbearing conduct in university administration—a responsibility primarily entrusted to elected State Governments. The Punjab and Haryana High Court in *Hardwari Lal vs. G.D. Tapse & Ors.* (1981) held that the powers and duties exercised and performed under the statute by the Chancellor have absolutely no relation to the exercise and performance of the power and duties of the office of the Governor and that no absolute immunity as envisaged in Clause (1) of Article 361 of the Constitution of India is available to the Governor for the acts done in exercise of the power or in performance of the duties as Chancellor of the University.

Furthermore, it is essential to recognize that the Governor assumes the role of titular head of the State, rather than a representative of its populace and, as such, he should not be embarrassed with being held accountable by Courts for administrative matters or public grievances. The role of the Governor should be confined strictly within the bounds of constitutional provisions. Hence, the time is ripe to advocate for a nationwide proscription against burdening Governors with the onerous responsibility of Chancellorship or any other extra-constitutional roles.

In this context, it is imperative to highlight the recommendations put forth by the Commission on Centre-State Relations under the Chairmanship of Justice Madan Mohan Punchhi. In its report submitted in March, 2010, the Commission articulated a profound stance on the issue of Governors serving as Chancellors of Universities and assuming other statutory positions, as outlined below:

“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 and which may expose the office to controversies or public criticism. Conferring statutory powers on the Governor by State Legislatures have that potential and should be avoided. Making the Governor the Chancellor of the Universities and thereby conferring powers on him which may have had some relevance historically has ceased to be so with change of times and circumstances. The Council of Ministers will naturally be interested in regulating University education and there is no need to perpetuate a situation where there would be a clash of functions and powers. Governor should not be assigned functions casually under any Statute. His role should be confined to the Constitutional provisions only.”

Given the incongruity between constitutional mandates and extra-constitutional roles, it becomes incumbent upon us to heed the sage recommendations of the Punchhi Commission and relieve Governors of non-constitutional responsibilities, including Chancellorships.

The Bill seeks to achieve the above-said objectives.

JOHN BRITTAS

ANNEXURE

EXTRACTS FROM THE CONSTITUTION OF INDIA

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158. —

Conditions of
Governor's office.

(1) The Governor shall not be a member of either House of Parliament or of a House of the Legislature of any State specified in the First Schedule, and if a member of either House of Parliament or of a House of the Legislature of any such State be appointed Governor, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as Governor.

(2) The Governor shall not hold any other office of profit.

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RAJYA SABHA

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(Dr. John Brittas, M.P.)