

LEGAL LOCK JOURNAL
2583-0384

VOLUME 1 || ISSUE 5

2022

This Article is brought to you for “free” and “open access” by the Legal Lock Journal. It has been accepted for inclusion in the Journal after due review.

To submit your Manuscript for Publication at Legal Lock Journal, kindly email your Manuscript at legallockjournal@gmail.com.

**LIABILITY OF THE GOVERNOR IN A CIVIL SUIT UNDER THE INDIAN
CONSTITUTION- AN INTROSPECTION OF THE POSITION WITH SPECIAL
REFERENCE TO N.D. TIWARI'S CASE**

Dr. D. Ganesh Kumar.¹

The President, Governor and Rajpramukh as constitutional heads of the State hold a distinct place under the Constitution. The present article attempts to analyze the position of the Governor under the Indian Constitution by making a recap, analysis and introspection through series of developments in the suit of paternity filed by Mr. Rohit Shekhar, the son of former Congress Activist Ms. Ujwala Sharma, against the then Governor of erstwhile State of Andhra Pradesh, Shri. N.D. Tiwari. Though there is no specific provision in the Constitution, providing and enshrining the privileges of the Governor separately, these privileges are discussed under Art 361 of the Indian Constitution along with the privileges of the President and Rajpramukhs. The office of the Rajpramukh is abolished and the word is omitted from the constitutional statute book by bringing a Constitutional Amendment.

Keywords: - liability, infraction, privilege, Governor, Constitution.

¹ Assistant Professor, Symbiosis Law School, (Symbiosis International (Deemed University), Pune), Hyderabad.

I would like to refer to the provision under the Indian Constitution to the question as to whether the President or Governor can be sued in any civil proceedings in any court of law having competent jurisdiction, during his stay in office.

Article 361² of the Indian Constitution provided for the ‘protection of President, Governors and Rajpramukhs’.

The Governor of a State is also liable, in the same manner, as an ordinary man is, for any Civil Law remedy. The powers, functions, privileges and immunities of a Governor of any state or Union territory in India are analogous³ to that of President of India. According to Article 361 of the constitution, the President of India can be sued in connection with any civil proceedings in any Court for any act done or purporting to be done by him in his personal capacity whether before or after he had entered upon his office, by any aggrieved person, by giving a two months notice, in which he furnishes as to the nature of suit proceedings, the cause of action, the relief claimed and his full name, occupation, residential address and other related relevant particulars⁴. However no criminal action can be brought against the president during his stay in the office. Though the President and the Governor stand on the same footing as the Constitutional Executive Heads, the powers and functions of the President are colossal, wider than the Governor of a State, being the Representative and Executive Head of the Nation. Though no such provision is specifically provided in the Constitution itself, the Governor exercises these powers and functions in a similar comportment with that of the president, and he cannot enjoy them more than that of what the president does. His powers are limited. Hence it is

² Article 361 reads: “. (1) The President, or the Governor or Rajpramukh of a State, shall not be answerable to any court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties: Provided that the conduct of the President may be brought under review by any court, tribunal or body appointed or designated by either House of Parliament for the investigation of a charge under Article 61: Provided further that nothing in this clause shall be construed as restricting the right of any person to bring appropriate proceedings against the Governor of India or the Government of a State

(2) No criminal proceedings whatsoever shall be instituted or continued against the President, or the Governor of a State, in any court during his term of office

(3) No process for the arrest or imprisonment of the President, or the Governor of a State, shall issue from any court during his term of office

(4) any civil proceedings in which relief is claimed against the President, or the Governor of a State, shall be instituted during his term of office in any court in respect of any act done or purporting to be done by him in his personal capacity, whether before or after he entered upon his office as President, or as Governor of such State, until the expiration of two months next after notice in writing has been delivered to the President or Governor, as the case may be, or left at his office stating the nature of the proceedings, the cause of action therefor, the name, description and place of residence of the party by whom such proceedings are to be instituted and the relief which he claims. “ The word ‘Rajpramukh’ was omitted from the Constitutional Statute book by bringing the 7th Constitutional (Amendment) Act, 1956.

³ Constitution of India.- Article 361- Privileges of President, Governor and Rajpramukh

⁴ Constitutional Law of India. Privileges of the President Governor and Rajpramukh

settled that the constitution does not bar on the initiation or institution of any civil suit against the Governor, as it is the Constitution which is the supreme law of the land.

Recalling back, the outraging acts of one of the Governor of the erstwhile State of Andhra Pradesh with sluts in the Raj Bhawan, and his subsequent removal from the Governor's office, is a blatant instance for claiming and stating that even the Governor stands in the same footing of an ordinary person and doesn't enjoy any privilege(s) for such outrageous or con acts and can be held liable like any other ordinary citizen of this country and can be asked to demit the Constitutional office for such infractions.

Though an inimitable, if any person files any Civil Petition in any Court , Praying the Court for an appropriate relief, is permissible and valid and provides no immunity and privilege to the President or Governor from the civil remedy through the jurisdiction of any court, if the Forensic Sciences Laboratory DNA Test Reports conducted or any other admissible evidences, proves the President or Governor to be liable, his official position and status will not in any way encumber the petitioner from claiming his legitimate and bonafide right in the civil suit against the President or Governor in any court of law in India having competent jurisdiction, provided certain important essential conditions and procedure is complied with, as mentioned above.

In a major momentary relief to the then Governor of Andhra Pradesh, on November, 3rd 2009, the Honorable Delhi High Court comprising of Honourable Justice Shiva Narayana Dhingra, dismissed the petition filed by one late Mr. Rohit Shekhar, a 30 years old law graduate, and son of a former Congress Activist Ms.Ujjwala Sharma, against the former Andhra Pradesh Governor, late Mr. N.D. Tiwari, who claimed himself to be the Son of Mr. N.D.Tiwari, former Governor of Andhra Pradesh and the petition was seconded by his mother Ms.Ujjwala Sharma's written statements which said that Mr.Tiwari drew her into an extramarital affair after getting legally separated from her husband and which resulted in the birth of Mr. Shekhar.⁵ The written statements further stated that Mr. Tiwari after becoming a Member of the Parliament started threatening her. The Honourable Court while allowing the plea of the former Governor, an 84-year-old Congress veteran who refuted to all the allegations stating that the suit was filed only to malign him and praying for the dismissal of the petition, held that the suit as not maintainable. The court after hearing the petition observed that the suit for claiming paternity can only be filed at Hyderabad as Mr. Tiwari was staying at Hyderabad. The Court further observed that Mr. Rohit Shekhar should have filed a paternity suit three years after becoming a major. Mr.

⁵ Rohit Shekhar v. Narayan Dutt Tiwari, AIR 2012 DEL 151.

Tiwari's main plea was that Mr. Shekhar has approached the court 31 years after his birth and this was an inordinate delay. He described it as an attempt to malign him. The Honourable Judge observed, "The Suit is barred by limitation and is dismissed on this ground".⁶

However, unconvinced by the order of the Honourable High Court of Delhi, Mr. Rohit Shekhar filed a Review petition before the Division Bench of the Delhi High Court, in the interest of justice. While setting aside the order of a single judge, the Division Bench comprising of Justices Vikramjit Sen and Manmohan Singh decided that the suit filed by a Delhi based lawyer, Mr. Rohit Shekhar claiming to be Mr. Tiwari's biological son should be heard. The Division Bench of the Delhi High Court on 17th March 2010 refused to entertain a petition filed by the former Andhra Pradesh Governor, seeking the dismissal of the paternity suit filed against him.

The Honourable Court observed "Human relations cannot be treated in the same manner as commercial or civil transactions."

The Veteran congress leader moved the Supreme Court seeking interim stay on the Delhi High Court's order directing him to give samples for DNA analysis. The options had been cited by Hyderabad-based centre for DNA, fingerprinting and Diagnostics for conducting the test on Mr Tiwari before the High Court. It is to be reminded that on 14th of February 2011, the Apex court comprising of a division Bench of Justice Aftab Alam and R.M. Lodha, though rejecting the plea for interim stay on the High Court order left it to the option of Mr. Tiwari to decide as to whether he would like to give blood sample, Saliva testing or hair strand examination. As Mr. Tiwari has 'ignored' the advice of the Supreme Court to spell out his choice, in spite of the court asking the counsel of Mr. Tiwari, Mr Ashok Desai, as to why his client was 'avoiding' the DNA test even when an offer was given to keep it in a 'sealed cover' under the custody of the court till a decision on the paternity suit was reached, the plea to grant stay on the Delhi High court order was declined by the Court on 18th of March, 2011. The court further ordered the former Governor of AP to undergo DNA Test.

On 27th of September 2011, the Delhi High Court comprising of Justice Geeta directed the former Governor, the petitioner, and the former husband of Ujjwal Sharma, to give blood samples at the High Court Dispensary failing which the courts will draw adverse inference that Mr. Tiwari is the Biological Parent of the petitioner. The former Governor after retracting his statements several times in this issue, was reluctant and refused to give

⁶ As Reported in Deccan Chronicle dated 4th November ,2009 on Page No.1 Titled "Tiwari 'son' Claim dismissed"

his blood samples for DNA test and finally out of legal compulsions, admitted that Rohit Shekhar is his biological son and is born to him as an outcome of his affair with the former Congress activist and mother of the petitioner.

From the above decision of the Delhi High Court and the Supreme Court it has been once again reiterated and made it crystal clear that the Governors of States are also subjected and amenable to Civil Suits like an ordinary person during their stay in office provided certain conditions are fulfilled. So, it has turn out to be high time to attenuate the dispute as to whether a Governor of a State can be sued and held liable for the acts done in his personal capacity, during his stay in office.