

EVA STALIN IAS ACADEMY - BEST IAS COACHING IN CHENNAI

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The Governor's move is dangerous, unconstitutional

The Governor of Tamil Nadu, R.N. Ravi, has dismissed V. Senthilbalaji, a Minister in the Council of Ministers of Tamil Nadu – as in the communication issued by the Raj Bhavan on June 29, 2023. (The Governor later backtracked on his decision late in the night, keeping the “dismissal” order in abeyance.) The operative part of the press release issued by the Raj Bhavan is that “there are reasonable apprehensions that continuation of Thiru V. Senthilbalaji in the Council of Ministers will adversely impact the due process of law, including fair investigation that may eventually lead to breakdown of the Constitutional machinery in the State”. Hence, the dismissal of the Minister.

This unprecedented and deliberately provocative act of dismissing a Minister of a government which enjoys an absolute majority in the State legislature, without the recommendation of the Chief Minister of the State, is going to set a dangerous precedent and has the potential to destabilise State governments putting the federal system in jeopardy. If Governors are allowed to exercise the power of dismissal of individual Ministers without the knowledge and recommendation of the Chief Minister, the whole constitutional system will collapse.

Articles and clarity

What needs to be examined first is whether Governors have the power to dismiss an individual Minister without the advice of the Chief Minister. Under Article 164 of the Constitution, the Chief Minister is appointed by the Governor without any advice from anyone. But he appoints the individual Ministers only on the advice of the Chief Minister. The Article implies that the Governor cannot appoint an individual Minister according to his discretion. So, logically, the Governor can dismiss a Minister only on the advice of the Chief Minister.

The reason is simple. The Chief Minister alone has the discretion to choose his Ministers. He decides who the Ministers of his Council will be. He also decides who will not remain as a Minister in his Council. This is a political decision of the Chief Minister, who is ultimately answerable to the people. The Constitution has not transferred the discretion of the Chief Minister to the Governor.

This point would become absolutely clear on



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The Tamil Nadu Governor's move to 'dismiss' a Minister highlights the point that the pleasure of the Governor under the Constitution of India insofar as it relates to Ministers is not the same as that of the colonial Governor

looking at the Government of India Act, 1935. Section 51(i) of this Act says, “the Governor's Ministers shall be chosen and summoned by him, shall be sworn as members of the council and shall hold office during his pleasure”. This Section makes it clear that the Ministers shall be chosen by the Governor. So, they hold office during his pleasure. Further, sub-section 5 of Section 51 says, “The functions of the Governor under this section with respect to the choosing and summoning and the dismissal of Ministers and with respect to the determination of their salaries, shall be exercised by him in his discretion”.

Two things are clear from Section 51(i) and Section 51(5) of the Government of India Act, 1935. One, the Ministers are chosen by the Governor. Two, they are dismissed by him at his discretion. Thus, the Governor during the colonial rule had absolute discretion to choose a Minister and dismiss him. The hire and fire approach.

A mere constitutional head

Now, the Tamil Nadu Governor's action conveys the impression that he thinks that the Governors under the Constitution of India have the same discretionary powers as the Governors appointed by His Majesty by the commission under the Royal Sign Manual. Perhaps the words, “the Ministers shall hold office during the pleasure of the Governor” in Article 164 might have given him such an impression. But, independent India has a constitutional system under which a Governor is a mere constitutional head and he can act only on the aid and advice of the Council of Ministers headed by the Chief Minister.

B.R. Ambedkar had stated unambiguously in the Constituent Assembly that there is no executive function which a Governor can perform independently under the Constitution. So, choosing a Minister and dismissing him are no longer within his discretion. It is the Chief Minister who chooses the Minister. It is the Chief Minister who recommends the removal of a Minister.

It is true that the pleasure doctrine has been brought into the Constitution of India from the Government of India Act, 1935. But these words simply refer to the formal act of issuing the order of dismissal which is to be done by the Governor, but only on the advice of the Chief Minister. It is because it is the Governor who appoints the

Ministers. Therefore, it has to be the Governor who should dismiss them.

The pleasure of the Governor under the Constitution of India insofar as it relates to the Ministers is not the same as that of the colonial Governor. It should be noted here that much of the Act of 1935 has been reproduced in the Constitution. Section 51 of the Government of India Act, 1935 confers on the Governor the discretion to choose as well as dismiss the Ministers. But when Article 164 of the Constitution was drafted, the words “chosen”, “dismissal” and “discretion” were omitted. It was a significant omission which makes it abundantly clear that the Constitution did not confer any discretion on the Governor to either choose or dismiss an individual Minister.

Judicial clarification

The position of the Governor in India's Constitutional setup has been clarified by the Supreme Court of India in a number of cases. In *Shamsher Singh and Anr vs State Of Punjab* (1974), a seven-judge Constitution Bench declared the Law on the Powers of a Governor in the Republic in the following words: “we declare the law of this branch of our Constitution to be that the President and Governor, custodians of all executive and other powers under various Articles, shall, by virtue of these provisions, exercise their formal constitutional powers only upon and in accordance with the advice of their Ministers save in a few well known exceptional situations...”

Similarly, in *Nabam Rebia vs Deputy Speaker*, a Constitution Bench of five judges reaffirmed the law laid down in *Shamsher Singh* and further held that the discretionary powers of the Governor are limited to the postulates of Article 163(i). The Court also set aside the decisions in the Mahabir Prasad Sharma and Pratapsing Rao/Jirao Rane cases, where it was held that the Governor can exercise power under Article 164 in an unfettered manner.

In sum, the dismissal of a Minister of the Tamil Nadu Government by the Governor of the State without the advice of the Chief Minister is constitutionally wrong. Newspaper reports suggest that the Governor later held back his order of dismissal for legal consultation. But the issue of dismissal of a Minister without the advice of the Chief Minister is one which clearly destabilises the constitutional system.

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A new chapter in India-Africa ties can be written

There is a slow realisation that Africa, a continent, accounting for nearly 17% of the world's population today and reaching 25% in 2050, needs to be studied closely. Why? Because India's rise as a global player is inevitably linked to the kind of partnership it enjoys with Africa.

In the past 15 years and especially since 2014, India-Africa relations have developed steadily but more progress is achievable. In this context, the 20-member Africa Expert Group (AEG), established by the Vivekananda International Foundation, recently presented the VIF Report entitled 'India-Africa Partnership: Achievements, Challenges and Roadmap 2023'. (This writer chaired the Africa Expert Group established by the Vivekananda International Foundation.)

Africa in transition

The report examines the transitions unfolding in Africa: demographic, economic, political and social. From this blend of changes, stamped by the adverse impact of the pandemic and complicated geopolitics, emerges a continent that is set to transform itself. It is slowly heading toward regional integration and is devoted to democracy, peace and progress, even as Ethiopia, Sudan, the Central African Republic and other countries continue to battle with the challenges posed by insurgency, ethnic violence and terrorism.

Superimposed on this landscape is the sharpening competition among at least half a dozen external partners such as China, Russia, the United States, the European Union, Japan, Türkiye and the United Arab Emirates for strengthening their relations with parts of Africa to ensure market access, gain energy and mineral security, and increase political and economic influence. China stands apart, armed with a consistent and robust policy since 2000 to



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Relations have developed well and steadily but more progress is achievable, as a new report points out

become virtually Africa's biggest economic partner. An essay in the report aptly portrays China's role as 'the infrastructure developer', 'the resource provider', and 'the financier.' It has invested enormously in Africa in terms of money, materials and diplomatic push.

Since 2007, Chinese leaders have visited the continent 123 times, while 251 African leaders have visited China. The VIF report notes that India has a substantive partnership with Africa and a rich fund of goodwill, but it is "essential for New Delhi to review its Africa policy periodically, stay resilient by making the required changes, and place a razor-like focus on its implementation".

Gist of recommendations

The central part is 'Roadmap 2030', a set of nearly 60 policy recommendations that are designed to deepen and diversify the India-Africa partnership. They cover four areas.

First, political and diplomatic cooperation should be strengthened by restoring periodic leaders' summits through the medium of the India-Africa Forum Summit; the last summit was in 2015. Besides, a new annual strategic dialogue between the chairperson of the African Union (AU) and India's External Affairs Minister should be launched in 2023. Another recommendation relates to forging consensus among G-20 members on the AU's entry into the G-20 as a full member. Action is now under way, following Prime Minister Narendra Modi's recent communication to G-20 leaders requesting support for this proposal. The expert group has also suggested that the Ministry of External Affairs (MEA) should have a secretary exclusively in charge of African affairs to further enhance the implementation and impact of the Africa policy.

Second, on defence and security cooperation, the government needs to increase the number of

defence attachés deployed in Africa, expand dialogue on defence issues, widen the footprint of maritime collaboration, and expand lines of credit to facilitate defence exports. More can be done to increase the number of defence training slots and enhance cooperation in counter-terrorism, cyber security and emerging technologies.

Third, the largest number of recommendations relate to economic and development cooperation. India-Africa trade touching \$98 billion in FY22-23 is an encouraging development. This figure can go up if access to finance through the creation of an Africa Growth Fund (AGF) is ensured. A special package of measures to improve project exports and build up cooperation in the shipping domain has been suggested. A special focus on promoting trilateral cooperation and deepening science and technology cooperation could pay rich dividends.

Fourth, socio-cultural cooperation should be increased through greater interaction between universities, think tanks, civil society and media organisations in India and select African countries. Setting up a National Centre for African Studies will be the right step. Indian Technical and Economic Cooperation (ITEC) and Indian Council for Cultural Relations (ICCR) scholarships awarded to Africans should be named after famous African figures. Visa measures for African students who come to India for higher education should be liberalised. They should also be given work visas for short periods.

Finally, the report suggests a special mechanism for implementing the 'Roadmap 2030'. This can best be secured through close collaboration between the MEA and the National Security Council Secretariat through a team of officials working under the joint leadership of the Secretary, Africa in the MEA, and a designated Deputy National Security Adviser.

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