



The Governor's Role: Challenges and Reform Proposals

This editorial is based on [“It is high time the colonial institution of the governor is reined in”](#) which was published in The Indian Express on 21/11/2023. It criticizes the role of Tamil Nadu Governor, who has returned several pending Bills to the state government, after the Supreme Court expressed serious concern about Governors not acting on Bills.

For Prelims: [Governor](#), [Article 200](#), [Article 201](#), [Art 361](#), [Punchhi Commission](#), [President](#), [Supreme Court](#), [Money bill](#), [Article 31A](#), [Venkatchaliah Commission](#), [Directive Principles of State Policy](#)

For Mains: Governors Powers related to passage of bills, Challenges, Way Forward and Recommendations made by various committees

The [Governor](#) of Tamil Nadu, has once again brought to light the issue of retaining the colonial institution of Governor. The [Supreme Court](#) reminded him that he is not an elected authority and should not presume to sit in judgement of the elected government, following which he returned all 10 bills sent to him for assent by the Tamil Nadu state legislature. To ensure that these bills receive assent, a special session was called by the speaker of the Tamil Nadu Assembly to pass these bills again. Additionally, decisions of the state government regarding sanction for prosecution of AIADMK ministers, appointment to the Tamil Nadu Public Service Commission, and premature release of prisoners have been held up by the governor for no apparent reason.

What are the Governor's Powers w. r. to Passage of Bills?

- The governor's powers with respect to the passage of bills are defined by [Article 200](#) and [Article 201](#) of the Constitution. According to these articles, the governor has the following options when a bill is presented to him/her by the state legislature:
 - He/she may give assent to the bill, which means the bill becomes an act.
 - He/she may withhold assent to the bill, which means the bill is rejected.
 - He/she may **return the bill (if it is not a money bill)** to the state legislature with a message requesting reconsideration of the bill or some of its provisions.
 - If the bill is passed again by the state legislature with or without amendments, the governor cannot withhold assent to it.
 - He/she may **reserve the bill for the consideration of the president**, who may either assent to or withhold assent from the bill, or direct the governor to return the bill to the state legislature for reconsideration.
 - The reservation of the bill by the governor is mandatory if the bill **endangers the position of the state high court**.
 - It is also discretionary if the bill is against the provisions of the Constitution, the [Directive Principles of State Policy](#), the larger interest of the country, or of

grave national importance, or deals with compulsory acquisition of property under [Article 31A](#) of the Constitution.

What are the Challenges associated with Governor's Office?

- **The Appointment of Governors:** The governor is **appointed by the president on the advice of the central government**. This raises questions about the political neutrality and impartiality of the governor.
 - There have been instances where governors have been appointed from the ruling party at the centre or have been removed or transferred for political reasons.
 - This undermines the dignity and stability of the office of the governor.
- **The Role and Powers of Governors:** The governor has various roles and powers under the constitution, such as giving assent to bills passed by the state legislature, appointing the chief minister and other ministers, sending reports to the president on the state of affairs, and exercising special responsibilities in some states.
 - However, these roles and powers are often **subject to the discretion** of the governor, which can lead to conflicts with the elected state government.
 - There have been cases such as Tamil Nadu's where **governors have delayed or withheld assent to bills**, dismissed or dissolved state governments, recommended president's rule, or interfered in the functioning of state universities.
 - These actions have been criticized as arbitrary, partisan, or unconstitutional by the state governments or the opposition parties.
- **The Accountability and Immunity of Governors:** Although the governor is **supposed to be the President's analogue** at the state government, the reality is that they have been, and continue to be, the **agents of the Union government**, sent to keep a check on popularly elected state governments.
 - The governor can be **removed from office at the pleasure** of the Union government.
 - The governor is secure in the knowledge that as long as they do as they are told by the Union government, they will continue to hold their positions. As **heads of state, they are not even answerable to the courts** for their actions while in office ([Art 361](#)).

What were the Constitutional Makers' views on Office of Governor?

- Some members of the Constituent Assembly, such as Dakshayani Velayudhan, Biswanath Das and H V Kamath, were highly critical of the provisions relating to governors.
 - They argued that the draft constitution was a replica of the [Government of India Act, 1935](#), which gave too much power to the Centre and undermined the autonomy of the states.
 - They also feared that the governors would act as agents of the Centre and interfere with the state governments.
- On the other hand, [B R Ambedkar](#), the chief architect of the constitution, defended the existing provisions relating to governors.
 - He said that there was very little time to make changes to the **Government of India Act, 1935**, and that the governors were only supposed to work with and not overrule the state governments.
 - He did not address the possibility of a governor simply doing what the Centre wishes, as other members pointed out.
 - He also did not explain why the provisions relating to the governor were retained as they were, while other provisions of the Government of India Act, 1935, were modified where needed.

Should the Office of Governor be abolished?

- The immediate response to such conduct by governors is often to advocate for the abolition of the institution altogether.
- However, **this approach is both imprudent and unnecessary.**

- Imprudent because [Westminster parliamentary democracy](#) necessitates the presence of a head of state and head of government, and eliminating the governor would entail dismantling the entire system.
- Unnecessary because there are **viable alternatives**, such as judicial intervention or constitutional reform.

What Reform Measures can be taken?

- **Judicial Intervention:** The Supreme Court can continue to monitor the conduct of the governors and issue directions or observations to ensure that they act in accordance with the Constitution and the law.
 - This can help to prevent arbitrary or partisan actions by the governors and uphold the federal principle of Indian polity.
- **Reform the Current Appointment and Removal Process:** The Constitution can be amended to change the process of appointment and removal of the governors, as suggested by the authors of "Heads Held High".
 - This can involve **a more transparent and consultative mechanism, such as a collegium or a parliamentary committee**, that can select the candidates based on merit and suitability.
 - The removal of the governors **can also be made more difficult by requiring a resolution of the state legislature** or a judicial inquiry.
- **Grant him/her a President-like status:** Make the governor accountable to the state legislature in the same manner that the president is accountable to the Union Parliament — through election and impeachment.
 - **Make him/her an Elected Representative:** The governor **can be made an elected representative of the state**, rather than a nominee of the Union government.
 - This can enhance the accountability and legitimacy of the office and reduce the scope for interference or influence by the Centre.
 - The election of the governor can be done by the state legislature or by the people of the state, as in the case of the president.
- **Make him/her Impeachable:** The governor can be made impeachable by the state legislature on the grounds of violation of the Constitution or misconduct.
 - This can provide a check and balance on the power and authority of the governor and deter any abuse or misuse of the office.
 - The **impeachment process can be similar to that of the president**, requiring a majority of the total membership and a two-thirds majority of the members present and voting in both houses of the state legislature.

What are the Constitutional Reforms suggested by Various Committees and Supreme Court?

- [The Sarkaria Commission \(1988\):](#)
 - The governor should be appointed by the president **after consultation with the Chief Minister** of the concerned state.
 - The governor should be a **person of eminence in some field of public life and not belong to the state** where he is appointed.
 - The governor **should not be removed before the completion of his term** except in rare and compelling circumstances.
 - The governor **should act as a bridge between the centre and the state** and not as an agent of the centre.
 - The governor should **exercise his discretionary powers sparingly and judiciously** and not use them to undermine the democratic process.
- [Venkatchaliah Commission \(2002\):](#)
 - The **appointment of Governors should be entrusted to a committee** comprising the prime minister, the home minister, the speaker of the Lok Sabha and the chief minister of the concerned state.
 - The governors **should be allowed to complete their five-year term**, unless they resign or are removed by the President on the ground of proven misbehaviour or incapacity.

- The central government **should consult the Chief Minister** before taking any action to remove the governor.
- The Governor should not interfere in the day-to-day administration of the state. He should **act as a friend, philosopher and guide to the state government** and use his discretionary powers sparingly.
- **Punchhi Commission (2010):**
 - The Commission recommended deleting **the phrase “during the pleasure of the President”** from the Constitution, which implies that a governor can be removed at the will of the central government.
 - Instead, the commission suggested that **a governor should be removed only by a resolution of the state legislature**, which would ensure more stability and autonomy for the states.
- **BP Singhal vs Union of India (2010):**
 - The Supreme Court held that the **President can remove a Governor at any time** and without assigning any reason. This is because the Governor holds office "during the pleasure of the President" under Article 156(1) of the Constitution of India. However, the Court also held that the **removal cannot be based on arbitrary, capricious or unreasonable grounds**.

Conclusion

The discussion on the role of Governors in India underscores the need for nuanced reforms. While outright abolition is deemed imprudent, proposals for transparent appointments, increased accountability, and limited discretionary powers have been put forth. **Striking a balance between state and central interests is crucial** for ensuring the effective functioning of the Governor's office without undermining democratic principles.

Drishti Mains Question:

Evaluate the challenges associated with the office of Governor and propose reforms to the current appointment and removal process, drawing insights from recommendations made by committees.

Legal Insights: [Major Powers of Governor](#)

<https://www.drishtijudiciary.com/en>

UPSC Civil Services Examination Previous Year Question (PYQ)

Prelims

Q. Consider the following statements: (2018)

1. No criminal proceedings shall be instituted against the Governor of a State in any court during his term of office.
2. The emoluments and allowances of the Governor of a State shall not be diminished during his term of office.

Which of the statements given above is/are correct?

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

Ans: (c)

Q. Which of the following are the discretionary powers given to the Governor of a State? (2014)

Sending a report to the President of India for imposing the President's rule

Appointing the Ministers

Reserving certain bills passed by the State Legislature for consideration of the President of India

Making the rules to conduct the business of the State Government

Select the correct answer using the code given below:

- (a) 1 and 2 only
- (b) 1 and 3 only
- (c) 2, 3 and 4 only
- (d) 1, 2, 3 and 4

Ans: (b)

Q. Which one of the following statements is correct? (2013)

(a) In India, the same person cannot be appointed as Governor for two or more States at the same time

(b) The Judges of the High Court of the States in India are appointed by the Governor of the State just as the Judges of the Supreme Court are appointed by the President

(c) No procedure has been laid down in the Constitution of India for the removal of a Governor from his/her post

(d) In the case of a Union Territory having a legislative setup, the Chief Minister is appointed by the Lt. Governor on the basis of majority support

Ans: (c)