



Constitutional silences, Unconstitutional inaction

This article is based on [“Constitutional silences, unconstitutional inaction”](#) which was published in The Hindu on 26/11/2022. It talks about issues related to the Governor in India.

For Prelims: Article 200, Supreme Court, National Commission to Review the Working of the Constitution, President's Rule (Article 356), Vice Chancellorship, Purushothaman Nambudiri vs State of Kerala (1962), Punchhi Commission, Second Administrative Reforms Commission, Venkatachaliah Commission.

For Mains: Constitutional Provisions Related to the Governor, Areas of Friction Related to the Governor, Recommendations of Various Commissions.

When the **Constitution was adopted by the Constituent Assembly**, the founders left deliberate gaps in it to enable a future **Parliament** to modify and amend the Constitution that was in accordance with the aspirations and the will of the people. A number of friction points in **Indian Polity** were born from this silence over time.

One of the silences in the Constitution is in **Article 200 which does not prescribe a timeline for the Governor to provide assent to Bills sent by the Legislative Assembly**. This has been used to advantage by the Governors of various **Opposition-ruled States** to obfuscate the mandate of democratically elected governments.

It is therefore necessary to examine the **grey areas between the Governor and State Legislature** from a detached perspective and find solutions to improve governance machinery at State level.

Which Constitutional Provisions Apply to the Governor?

- **Article 153** says that there shall be a **Governor for each State**. One person can be appointed as Governor for two or more States.
- The Governor is **appointed by the President** by warrant under his hand and seal and holds office under the pleasure of the President (**Article 155 and 156**).
- **Article 161** states that the governor has the power to grant pardons, reprieves, etc.
 - It was ruled by the **Supreme Court** that a Governor's sovereign power to pardon a prisoner is actually exercised in consensus with the State government rather than by himself.
- Under **Article 163**, the Governor is assisted and advised in the exercise of his functions by a **council of ministers headed by the Chief Minister**.
 - **Discretionary powers include:**
 - Appointment of a chief minister in the absence of a clear majority in the state legislature
 - In the event of a motion of **no confidence**
 - In case of failure of constitutional machinery in the State (**Article 356**)

- **Article 200** gives power to the **Governor to give assent, withholds assent, or reserves the bill** for the consideration of the President passed by the **Legislative Assembly**.

What are the Areas of Friction Related to the Governor?

- **Lack of Time bound Consideration of Bills:** **Article 200** has been accused by critics of being misused by governors in a number of cases range from the **Tamil Nadu Prohibition of Online Gambling and Regulation of Online Games Bill, 2022** (passed by the Tamil Nadu Assembly) to the **Kerala Lok Ayukta (Amendment) Bill, 2022** (passed by the Kerala Assembly).
 - In Tamil Nadu alone, almost **20 Bills** are [awaiting assent by the Governor](#).
- **Lack of Clear Demarcation of Powers:** It is unclear how the **constitutional mandate to act on the advice of the council of ministers should be distinguished from the statutory authority** to act as chancellor. This results in many conflicts between the **governor and the state government**.
 - Recently, the Kerala Governor appointed a [Vice Chancellor](#) at a university **bypassing government nominations**.
- **Appointment Bias:** Critics argue that **the central government has appointed political figures and former bureaucrats aligned with particular political ideologies** as governors, which violates the **constitutionally mandated neutrality of the office**.
- **Apprehensions of Centre's Agent:** In 2001, the [National Commission to Review the Working of the Constitution](#), held that the **Governor owes his appointment and his continuation to the Union**. Apprehensions exist that he will follow instructions given by the Union Council of Ministers.
 - Critics state that this has been a **major cause behind the Governor's recommendation for President's Rule (Article 356)** in a state. It has not always been based on 'objective material', but on political whim or fancy.
- **No Written Procedure for Removal:** Governors have been **removed arbitrarily several times** because there are **no written grounds or procedures for removing them**.

What Should be the Way Forward?

- **Honouring the Will of Legislature:** In **Purushothaman Nambudiri vs State of Kerala (1962)**, a Constitution Bench of the Supreme Court clarified that the **Constitution does not impose any time limit within which the Governor should provide assent to Bills**.
 - However, the Court has maintained that the **Governor must honour the will of the Legislature** and they can **act only in harmony with their Council of Ministers**.
- **Reasonable Time for Consideration of Bills:** The constitutional silences should not give way for unconstitutional inaction, leaving space for anarchy in the rule of law.
 - The '**National Commission to Review the Working of the Constitution' 2000** recommended that **"there should be a time-limit, say a period of six months, within which the Governor should take a decision** whether to grant assent or to reserve a Bill for consideration of the President.
- **Rethinking Chancellorship:** [Punchhi Commission](#) suggested that the **Convention of Governors serving as Chancellors of Universities** and holding other statutory positions should be **abolished** because it opens their office to **controversies and public criticism**.
- **Security of Tenure and Guided Discretion:** According to the [Venkatchaliah Commission](#), **Governors should be allowed to complete their five-year terms normally**. Before removing them early, the **central government should consult the concerned Chief Minister of State**.
 - Also, the [Second Administrative Reforms Commission](#) stated that the **Inter-State Council should formulate guidelines** on how governors should exercise discretionary power.

Drishiti Mains Question

Highlight the instances where Constitutional silences have resulted into unconstitutional inaction.

UPSC Civil Services Examination, Previous Year Questions (PYQ)

Prelims

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

1. Sending a report to the President of India for imposing the President's rule
2. Appointing the Ministers
3. Reserving certain bills passed by the State Legislature for consideration of the President of India
4. 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)

Mains

Q. Whether the Supreme Court Judgment (July 2018) can settle the political tussle between the Lt. Governor and elected government of Delhi? Examine. (2018)

Q. Discuss the essential conditions for exercise of the legislative powers by the Governor. Discuss the legality of re-promulgation of ordinances by the Governor without placing them before the Legislature. (2022)