



SC to Examine Governor's Immunity

For Prelims: Article 361, [Governor](#), [Article 153](#), [Judicial review](#), [President](#), [Supreme Court](#),

For Mains: Constitutional Provisions Related to the Governor, Governor's Immunity against civil and criminal proceedings.

[Source: IE](#)

Why in News?

Recently, the [Supreme Court \(SC\)](#) of India agreed to examine the **question of immunity** to [Governors](#) from any kind of criminal prosecution, granted under **Article 361** of the Constitution.

- This came after the [Chief Justice of India](#) heard a plea from a female Raj Bhavan employee who filed a sexual harassment complaint against the West Bengal Governor.

What are Immunities Provided to the Governor under Article 361?

- **Origin of Governor's Immunity:**
 - It is linked to the Latin maxim "*rex non potest peccare*," or "the king can do no wrong".
 - During the **Constituent Assembly's discussion** on Article 361, member H V Kamath questions the **extent of criminal immunity for the President and Governors**, particularly regarding the initiation of proceedings against them for criminal acts.
 - Despite these concerns, the **article was adopted without further debate.**
- **Immunities under Article 361:**
 - **Non-Answerable to Courts: Article 361(1)** states that the President or the Governor of a State is not answerable **to any court for the exercise of their powers and duties**, or for any act done in the exercise of those powers and duties.
 - Article 361 is an **exception to Article 14 (Right to Equality)**.
 - **Protection from Criminal Proceedings:** Under **Article 361(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.
 - **No Arrest:** Under **Article 361(3)**, no arrest or imprisonment processes can be issued against the President or Governor during their term of office.
 - **Protection from Civil Proceedings:** Under **Article 361(4)**, no civil lawsuits can be filed against the President or Governor of a State during their term of office for any personal acts until two months after giving written notice.
 - The notice must include the nature of the proceedings, the cause of action, the party filing the lawsuit, and the relief being sought.

Governor

Eligibility Criteria

- Must be a **citizen of India**
- At least **35 years** of age
- Must **not be a member of (either) house** of Parliament/State Legislature
- Must not hold any **office of profit**

'Dual Capacity'

- **Constitutional head of the state** and **Representative of the Union government**

Appointment and Tenure (Part VI)

- Appointed by President (**Article 153**)
- One person can be appointed as Governor for **2+ States (7th Const. Amendment in 1956)**
- Holds the office at the **Pleasure of the President** (maximum **5 years**)

Ending Tenure before 5 Years

- **Dismissal by President** (on advice of the Council of Ministers headed by PM)
 - Dismissal of governors without a valid reason is not permitted
- On grounds of **acts upheld by courts as unconstitutional** and malafide
- **Resignation** by the governor

Powers (Part VI)

- Article 161: **Pardoning powers**
- Article 164: Power to **appoint the CM and other Ministers**
- Article 176: **Special Address** by Governor
- Article 200: Power to **(withhold) assent/reserve a bill** (Legislative Assembly)
- Article 213: Power to **promulgate Ordinances**

Responsibilities

- **Appoints** – CM, other Ministers, Advocate General of State, Members of State PSC, judges of HC and districts
- Act as **ex-officio chancellor** of state Universities

How have the Courts Interpreted Article 361?

- **Dr SC Barat And Anr vs. Hari Vinayak Pataskar Case, 1961:** In this, a distinction was made between the **Governor's official and personal conduct**. While complete immunity is granted for official actions, **civil proceedings can be initiated with the prior notice of 2 months** for the Governor's actions.
- **Rameshwar Prasad vs. Union of India Case, 2006:** The Supreme Court acknowledged

the **Governor's "complete immunity"** under Article 361(1) for constitutional actions but **allowed judicial scrutiny for malafide actions.**

- This case established that **while official actions are protected, there are mechanisms for accountability.**
- **Madhya Pradesh High Court, 2015:** In the *Vyapam scam case*, the court ruled that Governor Ram Naresh Yadav had **"absolute protection" under Article 361(2)** from malicious publicity **while in office.**
 - His name was removed from the investigation to prevent undue legal harassment, maintaining the integrity of the office.
- **State of UP vs. Kalyan Singh Case, 2017:** The Supreme Court held that Kalyan Singh, then Governor of Rajasthan, was entitled to immunity under **Article 361** while in office. Charges related to the [Babri Masjid demolition](#) would proceed once he ceased to be Governor, reinforcing the protection of the Governor's duties and dignity.
- **Telangana High Court Judgment (2024):** In this, HC observed that "there is no express or implicit bar in the Constitution which excludes the power of judicial review in respect of an action taken by the Governor".
 - Further, the court stated that **Article 361 immunity is personal and does not exclude judicial review.**

Note:

- The **US Supreme Court** recently ruled that **former President Donald Trump**, like other former presidents, is **granted "absolute immunity" from criminal prosecution for actions taken in an official capacity**, but this immunity does **not extend to unofficial or personal actions.**

What are the Recommendations Regarding Reforms in the Office of the Governor?

- **Sarkaria Commission (1988):**
 - The Governor should be appointed by the President **after consulting the Chief Minister** of the respective state.
 - The Governor should be an individual of **eminence in public life** and should not belong to the state where they are appointed.
 - Governors **should not be removed before the completion of their term**, except under rare and compelling circumstances.
 - The Governor should **serve as a bridge between the Centre and the state**, rather than acting as an agent of the Centre.
 - Discretionary powers **should be exercised sparingly and judiciously**, avoiding any actions that might undermine the democratic process.
- **Venkatachaliah Commission or National Commission to Review the Working of the Constitution (NCRWC) (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 grounds 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 the deletion of the phrase **“during the pleasure of the President”** from the Constitution, which suggests that a Governor can be removed at the will of the central government.
 - It proposed that a Governor should only be **removed by a resolution of the state legislature**, thereby ensuring greater stability and autonomy for states.

What are the Constitutional Provisions Related to the Governor?

- **Article 153:** There **shall be a Governor for each state.** A single person can be appointed as the Governor for two or more states (recommended by the [Sarkaria Commission](#)).
 - The Governor is appointed by the **President and is a nominee of the Central Government.**
- **Dual Role:** It acts as the **constitutional head of the state**, bound by the advice of the Council of Ministers (CoM) and functions as a **vital link between the Union Government and the State Government.**
- **Articles 157 and 158:** Specify the eligibility requirements for the post of Governor.
- **Article 161:** The Governor has the **power to grant pardons, reprieves**, etc.
- **Article 163:** There is a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, **except in some conditions where discretion is allowed.**
- **Article 164:** The Governor appoints the Chief Minister and other Ministers.
- **Article 200:** The Governor assents, withholds assent, or reserves the bill for the consideration of the President passed by the Legislative Assembly.
- **Article 213:** The Governor may promulgate ordinances under certain circumstances.

Read more: [Governor](#), [The Governor's Role: Challenges and Reform Proposals](#), [Governors in the Limelight: Calls for Reform in India](#), [Governor's Role in State Legislature](#)

Drishti Mains Question:

Examine the necessity of re-evaluating the governor's immunity provisions under Article 361 of the Indian Constitution.

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)**

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