



Governors in the Limelight: Calls for Reform in India

This editorial is based on [“Raj Bhavan needs radical reforms”](#) which was published in The Hindu on 03/01/2024. The article discusses the challenges posed by the office of the Governors in the day-to-day functioning of democratically elected state governments and the need for ushering in the era of requisite reforms vis-a-vis the Governor's office.

For Prelims: [Governor](#), [Article 200](#), [Article 201](#), [Art 361](#), [Punchhi Commission](#), [President](#), [Supreme Court](#), [Money bill](#), [Article 31A](#), [Venkatachaliah 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 position of [State Governor](#) holds significant importance in our political system, serving as a crucial link between the Centre and the States. It is regarded as a pivotal element of our democratic governance, emphasising cooperation. However, the role, powers, and discretionary authority of Governors in various states have long been the subject of intense debates within the political, constitutional, and legal spheres. **The recent dispute between the Kerala Governor and the State Government regarding the approval of bills et cetera has attracted significant attention.**

How did the Post of Governor Come About?

- **Before Independence:**
 - Since 1858, when India was administered by the [British Crown](#). Provincial Governors were agents of the crown, functioning under the supervision of the **Governor-General**.
 - With the [Government of India Act, 1935](#), the governor was now to act in accordance with the advice of Ministers of a province's legislature, but retained special responsibilities and discretionary power.
- **Post-Independence:**
 - The post of the governor was extensively debated in the [Constituent Assembly](#), which decided to retain it while re-orienting its role from the British era.
 - Currently, under the parliamentary and cabinet systems of governance adopted by India, the **Governor was envisaged to be the Constitutional Head of a state.**

What are Constitutional Provisions Related 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.
 - The [Supreme Court](#) stated that the sovereign power of a Governor to pardon a prisoner is

actually exercised in consensus with the State government and not by the Governor on his own.

- S/he is bound by the advice of the state government.
- **Article 163** states that there is a council of ministers headed by the **Chief Minister** to aid and advise the Governor in the exercise of his functions, except some conditions for discretion.
 - **Discretionary powers include:**
 - Appointment of a chief minister when no party has a clear majority in the state legislative assembly
 - In times of **no-confidence motions**
 - In case of failure of constitutional machinery in the State (**Article 356**)
- 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.
- **Article 361** states that the Governor of a State, shall not be answerable to any court for the exercise and performance of the powers and duties.

What are the Issues Related to the Post of Governor in India?

- **Affiliation Based Appointment:** Politicians and former bureaucrats affiliated with the ruling party have been appointed in several instances as Governors.
 - This has led to questions about the post's impartiality and non-partisanship. Also, the convention of consulting the Chief Minister before appointing the Governor is often ignored.
- **From Centre's Representative to Centre's Agent:** Critics refer to governors as the 'agents of the Centre' today.
 - **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.
 - This goes against the constitutionally mandated neutral seat and has resulted in bias.
- **Misuse of Discretionary Powers:** The discretionary powers of governor have been misused in many instances.
 - For instance, **it has been argued by critics that the Governor's recommendation for President's Rule** in a state has not always been based on 'objective material', but on political whim or fancy.
- **Removal of Governors:** Having no written grounds or procedures for removing governors, several times governors were removed arbitrarily.
- **No Clear Distinction Between Constitutional and Statutory Role:** The constitutional mandate to act on advice of the council of ministers is not clearly distinguished from the **statutory authority as chancellor**, resulting in many conflicts between the governor and the state government.
 - For instance, there was a recent appointment of a Vice Chancellor in a university by the Kerala Governor, bypassing government nominations.
- **Constitutional Loopholes:** In the Constitution, **there are no guidelines for exercise of the governor's powers in-case of appointment of Chief Minister** or dissolving the Assembly.
 - Also, there is no limit set for how long a Governor can withhold assent to a Bill.
 - As a result, friction between the governor and concerned state governments is likely to arise.

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 center and the state** and not as an agent of the center.
 - The governor **should exercise his discretionary powers sparingly** and judiciously and not use them to undermine the democratic process.
- **S.R. Bommai Judgment (1994):**
 - The case put an end to the **arbitrary dismissal of State governments by a hostile Central government.**
 - The verdict ruled that the floor of the **Assembly is the only forum that should test the majority of the government of the day**, and not the subjective opinion of the Governor.
- **Venkatachaliah 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.
- **In Rameshwar Prasad v. Union of India (2006):**
 - After finding that the Governor abused power in recommending Presidential rule in Bihar, **the Supreme Court said that the motivated and whimsical conduct of the Governor is amenable to judicial review.**
 - Yet, the question of whether Governors can claim immunity for extra-constitutional gestures and utterances was not a matter in issue in Rameshwar Prasad.
- **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.
- **Nabam Rebia And Etc. vs Deputy Speaker And Ors (2016):**
 - In this case, the **Supreme Court cited the observations of B R Ambedkar:** “The Governor under the Constitution has no function which he can discharge by himself; no functions at all.
 - While he has no functions, **he has certain duties to perform**, and the House will do well to bear in mind this distinction.”
 - SC ruled that **Article 163 of the Constitution does not give the Governor a general discretionary power** to act against or without the advice of his Council of Ministers.
- **NCT of Delhi v. Union of India (2018):**
 - A Constitution Bench of the Supreme Court emphasised the need to identify the “moral values of the Constitution” based on a notion of “constitutional culture”.

- It said that “**constitutional morality places responsibilities and duties on individuals** who occupy constitutional institutions and offices”.
- **Governors should identify whether their actions reflect constitutional morality or not.**
- **Kaushal Kishor v. State of Uttar Pradesh (2023):**
 - The Court said that the freedom of expression of public functionaries could not be curtailed other than by way of the “reasonable restrictions”, as permitted by [Article 19\(2\)](#) of the Constitution.

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:

Do you agree that the constitutional seat of governor has tilted towards the agent of the centre? Also, discuss major friction points between the governor and state legislature.

UPSC Civil Services Examination, Previous Year Question

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)

