



## Governor and State Legislature

This article is based on [“Should Chief Ministers have a say in the appointment of Governors?”](#) which was published in Financial Express on 11/11/2022. It talks about the Informal Sector in India and related issues.

**For Prelims:** Article 153, Supreme Court, Article 200, National Commission to Review the Working of the Constitution, Cooperative Federalism, Chancellor, Inter-State Council, Punchhi Commission, 2nd Administrative Reforms Commission, Sarkaria Commission.

**For Mains:** Constitutional Provisions Related to the Governor, Issues Related to the Post of Governor in India, Reforms Proposed by Various Commissions.

The post of [Governor of a State](#) is of immense importance in our political system. The Governor acts as a **bridge between the Centre and the States**. It is considered as one of the **pivotal parts of cooperative governance that our democracy is proud of**.

But for a long time, the **role, powers, and discretion of the Governor’s office** in multiple states have been hotly debated in the **political, constitutional, and legal realms**.

Governor-State friction has recently flared up. The **power spat** between the Delhi government and the Lieutenant Governor over the **appointment of bureaucrats** and deadlock between the **Tamil Nadu government and Governor’s assent to the [National Eligibility cum Entrance Test \(NEET\) exemption Bill](#)** are instances of a tussle.

To advance towards [cooperative federalism](#), this topic needs closer scrutiny, considering different aspects from **detached perspectives**.

### 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 the Governor on his own.
    - The **advice of the government binds the Head of the State**.
- **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)**
- **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.
- **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 Reforms Proposed by Various Commissions?

- **Punchhi Commission:** The impeachment procedure for the **President** can be adapted to

impeach governors as well.

- 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**.
- **2<sup>nd</sup> Administrative Reforms Commission:** The [Inter-State Council](#) should formulate guidelines on how governors should exercise discretionary power.
- **Rajamannar Committee:** The [Rajamannar Committee](#) emphasised that the governor of the state should not consider himself as an agent of the centre but play his role as the constitutional head of the State.
- **Sarkaria Commission:** In its report, the Commission recommended that **Article 356 should only be used in very rare instances** when it is impossible to prevent a breakdown of constitutional machinery within a State.
- **Venkatachaliah Commission:** It recommended allowing Governors to complete their five-year terms ordinarily.
  - The **central government should consult with the Chief Minister** before removing them before the end of their term.

## What Should be the Way Forward?

- **Reimagining Appointment Procedure:** It would be appropriate to devise a committee comprising the **Prime Minister, the Home Minister, the Speaker of the Lok Sabha and the Chief Minister of the State concerned** to select the Governor.
- **Neutral Constitutional Stand:** The Governor is supposed to be an **independent, non-partisan person**. He/she is supposed to **keep the interests of the State in mind** and also ensure that the link between the State and the Centre is maintained in a smooth way.
- **Framing a Code of Conduct:** There is a need to devise a 'Code of Conduct' that should define certain '**norms and principles**' that should **guide the governor's discretion** and constitutional mandate.
  - Discretion must be a **choice dictated by reason**, actuated by good faith and tempered by caution.

### ***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 governor and state legislature.

## **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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