



Roles and Powers of Governor

For Prelims: Constitutional Provisions Related to Governor

For Mains: Friction Points in Governor-State Relations

Why in News?

Recently, Kerala Governor **warned ministers that the statements of individual ministers** that lower the dignity of the Governor's office **can invite action including withdrawal of pleasure.**

What is Pleasure Doctrine?

▪ About:

- The pleasure doctrine is a **concept derived from English common law**, under which the crown can dispense with the services of anyone in its employ at any time.
- In **India, Article 310 of the Constitution** says every person in the defence or civil service of the Union **holds office during the pleasure of the President**, and every member of the **civil service in the States** holds office during the **pleasure of the Governor**.
- However, **Article 311 imposes restrictions on the removal of a civil servant**. It provides for civil servants being given a reasonable opportunity for a hearing on the charges against them.
 - There is also a provision to dispense with the inquiry if it is not practicable to hold one, or if it is not expedient to do so in the interest of national security.
- Under **Article 164, the Chief Minister (CM) is appointed by the Governor**; and the other Ministers are appointed by the Governor on the CM's advice.
 - It adds that **Ministers hold office during the pleasure of the Governor**. In a constitutional scheme in which they are appointed solely on the CM's advice, the 'pleasure' referred to is also taken to mean the right of the CM to dismiss a Minister and not that of the Governor. In short, the Governor of an Indian State cannot remove a Minister on his own.

▪ Supreme Court's View:

- **Shamsher Singh & Anr vs State Of Punjab (1974):**
 - In this case, a **seven-judge Constitution Bench of the Supreme Court said that** the President and Governor, custodians of all executive and other powers under various Articles, **shall exercise their formal constitutional powers only upon and in accordance with the advice of their Ministers** save in a few well-known exceptional situations.
- **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

- **Mahabir Prasad v. Prafulla Chandra 1969:**

- The case revolved around the question of the **nature of the governor's pleasure under article 164(1)**.
- The **governor's pleasure under article 164(1) is subject to Article 164(2)**. Thus, the withdrawal of the governor's pleasure must coincide with the withdrawal of support to the ministry by the assembly.

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.
 - A **Governor is appointed by the President** and is a nominee of the Central Government.
- It is stated that the **Governor has a dual role**.
 - He is the constitutional head of the state, bound by the advice of his Council of Ministers (CoM).
 - He functions as a vital link between the Union Government and the State Government.
- **Articles 157 and 158** specify eligibility requirements for the post of governor. A governor must:
 - Be a citizen of India.
 - Be at least 35 years of age.
 - Not be a member of the either house of the parliament or house of the state legislature.
 - Not hold any office of profit.
- Governor has the power to grant **pardons**, reprieves, etc. (Article 161).
- There is a **CoM with the CM at the head to aid and advise the Governor** in the exercise of his functions, except some conditions for discretion. (Article 163).
- The Governor **appoints the Chief Minister and other Ministers** (Article 164).
- Governor assents, withholds assent, or reserves the bill for the consideration of the President passed by the Legislative Assembly (Article 200).
- Governors may promulgate the Ordinances under certain circumstances (Article 213).

What are the Friction Points in Governor-State Relations?

- **Governor is envisaged as an apolitical head** who must act on the advice of the council of ministers. However, the Governor enjoys certain discretionary powers granted under the Constitution. **For example:**
 - **Giving or withholding assent to a Bill** passed by the state legislature,
 - **Determining the time needed** for a party to prove its majority, or **which party must be called first to do so**, generally after a hung verdict in an election.
- There are no **provisions laid down for the manner in which the Governor and the state must engage publicly** when there is a difference of opinion.
- The Governor has a 5-year tenure, he can remain in office only until the pleasure of the President.
 - 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.
 - There is the apprehension that he is likely to act in accordance with the instructions received from the Union Council of Ministers.
- In the Constitution, **there are no guidelines for exercise of the Governor's powers**, including for appointing a CM or dissolving the Assembly.
- There is **no limit set for how long a Governor can withhold assent to a Bill**.
- The Governor sends a report to the centre which forms the basis of the Union cabinet's recommendations to the President for invoking **Article 356 (President's Rule)**.

What Attempts have been Made to Address Concerns over the Alleged Partisan Role Played by Governors?

- **Changes regarding the Selection of Governors:**
 - The National Commission To Review the Working of the Constitution appointed by the Atal

Bihari Vajpayee government in 2000 suggested that the **Governor** of a State should be **appointed by the President**, after consultation with the Chief Minister of that State.

▪ **Proposal by Sarkaria Commission:**

- The Sarkaria Commission, set up in 1983 to look into Centre-state relations, proposed that the **Vice President of India and Speaker of Lok Sabha should be consulted by the Prime Minister** in the selection of Governors.

▪ **Punchhi Committee Proposal:**

- The Justice Madan Mohan Punchhi Committee, constituted in 2007 on Centre-state relations, **proposed in its report that a committee comprising the Prime Minister, Home Minister, Vice President, Speaker, and the concerned Chief Minister** should choose the Governor.
- The Punchhi Committee **recommended deleting the “Doctrine of Pleasure” from the Constitution**, but backed the right of the Governor to sanction the prosecution of ministers against the advice of the state government.
- It also **argued for a provision for impeachment of the Governor by the state legislature.**

Way Forward

- While Governors may differ with the contents of a Bill and may exercise the available constitutional options, **they should not use their powers to stall legislation unpalatable to them.**
- It is time to implement the principle that the M.M. Punchhi Commission, which reviewed Centre-State relations, recommended that **Governors should not be burdened with the role of Chancellors.**
- Governors **seem to have an exaggerated notion of their own roles** under the Constitution. They are **expected to defend the Constitution and may use their powers** to caution elected regimes against violating the Constitution, but this does not mean that they can use the absence of a time-frame for decision-making and the discretionary space given to them to function as a parallel power centre.

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)

- Article 163 of the Constitution says that the Governor shall exercise his functions with the aid and advice of the Council of Ministers except for functions which require his discretion.
- Under Article 356 of the Indian Constitution, the Governor of a State can **send a report to the President of India recommending imposition of President Rule in the State.** This is a discretionary power being conferred upon Governor. **Hence, 1 is correct.**
- **He appoints the Chief Minister (CM) and other ministers.** They also hold office during his pleasure. The appointment of ministers in State cabinet is not at the discretion of Governor. He only formally approves the appointment. The discretion comes under CM. **Hence, 2 is not**

correct.

- Governor can reserve certain bills passed by the State legislature for the consideration of the President. In one case such reservation is obligatory, that is, where the bill passed by the State legislature endangers the position of the State High Court. In addition, the Governor can also reserve the bill if it is against the provisions of the Constitution, opposed to the Directive Principles of State Policy, against the larger interest of the country, of grave national importance, etc. **Hence, 3 is correct.**
- **He makes rules for the more convenient transaction of the business of a State government** and for the allocation among the ministers of the said business. But this power is not under Governor's discretion. He acts on the advice of Council of Ministers. **Hence, 4 is not correct. Therefore, option (b) is the correct answer.**

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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