

**Introduction**

Part VI of the Constitution of India deals with the State executive. The State executive consists of the Governor, the Chief Minister, the Council of Ministers and the advocate-general of the State. In India, the President and Governor are regarded as a titular head of the State. Appointment of a Governor has been specified in article 153 of the Indian Constitution. Therefore, the Governor has been made just a nominal head at the State level; the real official comprises the Council of Ministers headed by the Chief Minister.

**Appointment of Governors**

According to Article 155, the Governor is appointed by the President under his hand and seal. Thus, in case of Governor, no elections are held and he is selected directly, unlike the President who is chosen by election, and a person can be appointed as the Governor by the authority of the President.

Reason for adopting this system of appointment of Governor:

- ❑ Direction elections would be incompatible with the Parliamentary system established in the States.
- ❑ Direction election could create conflicts.
- ❑ Direction election would be a costly affair.
- ❑ An elected Governor could be a non-neutral person.
- ❑ The system of Presidential nomination enables the centre to maintain its control over the States.

Keeping in mind, the above-mentioned reasons, the appointment form of appointing the Governor was taken (This model is followed in Canada)

The Supreme Court in 1979 said that the office of Governor is not an employment under the central government. It is an independent constitutional office and is not under the control of or subordinate to the central government.

**Term of Office of Governor**

The provisions for the term of the Office of the Governor have been provided in Article 156 of the Constitution. Under this article the following terms are provided:

- ❑ The Governor holds his office at the pleasure of the President. It means that a Governor serves till the

time President deems it fit and he can be removed by him at any time.

- ❑ The Governor also has the power to resign from his office during his term. He can resign by addressing his intention to do so in writing to the President.
- ❑ Unless the Governor resigns from his office or the President removes him, the normal term of a Governor is provided for a period of 5 years from the date of him entering his office. (Article 156 (3))

**Qualification**

For a person to become a Governor he has to fulfil some requirements. According to Article 157, a person is eligible for appointment as the Governor if:

- ❑ He is a citizen of India
- ❑ He has completed the age of 35 years

Conventions that have developed while appointing a Governor

- ❑ He should be not from a State where he is appointed
- ❑ While appointing the Governor, the President is required to consult the Chief Minister of the State concerned

**Conditions of the Governor's office**

Some conditions are also attached to the office of Governor which have to be observed. These conditions have been provided under Article 158 of the Constitution which are:

- ❑ He should not be member of either house of Parliament or a house of the State Legislature. If any such person is elected as Governor, he is deemed to have vacated his seat in that house on the date which he enters upon his office
- ❑ He should not hold an office of profit
- ❑ He is entitled, without payment of rent, to the use of his official residence
- ❑ He is entitled to such emoluments, allowances and privileges as may be determined by Parliament
- ❑ His emoluments and allowances cannot be diminished during his term of office
- ❑ If he is appointed as the Governor of two or more States, his salary and allowances payable to him

are shared by the States in such proportion as determined by the President

### ***Term of Governor's office***

- ❑ He holds the office for a term of five years
- ❑ However, his term is subjected to the pleasure of the President
- ❑ The Constitution has not laid down any grounds for the removal of the Governor by President
- ❑ A Governor can also hold office beyond his term until his successor assumes charge

### ***Oath of the Governor***

The Governor on being appointed has to undertake an oath before entering the Office. The oath of the Governor is observed under Article 159 of the Constitution.

The oath is administered by the Chief Justice of the High Court of the concerned State and in case the Chief Justice is not present, then the senior most judge of the High Court administers the oath and he/she addresses his resignation to President of India.

### ***Immunity***

- ❑ He enjoys personal immunity from legal liability for his official acts
- ❑ During his term of office, he is immune from any criminal proceedings, even in respect of his personal acts. He cannot be arrested or imprisoned
- ❑ However, after giving two months' notice civil proceedings can be instituted against him during his term of office in respect of his personal acts

### ***Powers of Governor***

The Governor by being the Executive head of the State has been given many powers which can be broadly categorized into several categories. The powers of the Governor are similar to those of the President. These categories of the powers of Governor are as follows:

#### ***Executive powers***

Article 154 of the Indian Constitution talks about the executive power of the State being vested in the hands of the Governor which shall be exercised by him either directly or indirectly, through officers' subordinate to him in accordance with this Constitution.

The following comes under his executive powers:

- ❑ Every executive action that the State government takes, is to be taken in the name of the Governor of that State.
- ❑ The Governor specifies the rules and instructions for how an order that has been taken up in his name is to be authenticated.
- ❑ The Governor makes rules for the exchange of the

matters and portfolios of the legislature of the State for its allotment among Ministers.

- ❑ He has been entitled with the privilege to look for data from the Chief Minister, and the Chief Minister of the State must notify and answer him regarding all choices of his service and can likewise require the Chief Minister to present any individual Minister's choice for the thought of the Council of Ministers.
- ❑ The Governor may/may not generate rules for simplification of transactions of the business of the State government.
- ❑ Chief Ministers and other Ministers of the States are appointed by the Governor himself.
- ❑ It is the responsibility of the Governor to appoint Tribal Welfare Minister in the following States of:
  - Chhattisgarh
  - Jharkhand
  - Madhya Pradesh
  - Odisha
- ❑ The Governor appoints the advocate general of States and determines their remuneration.
- ❑ He appoints the people for the following posts:
  - State Election Commissioner
  - Chairman and Members of the State Public Service Commission
  - Vice-Chancellors of the universities in the State
- ❑ The Governor seeks information from the State government.
- ❑ A constitutional emergency in the State is recommended by the Governor to the President.
- ❑ The Governor enjoys extensive executive powers as an agent of the President during the time of President's rule in the State.

#### ***Judicial Powers***

The Governor is also provided with some judicial powers under the Constitution. Under Article 161 of the Constitution, the Governor has been granted this power.

- ❑ Just like the President, the Governor also has the power to grant pardon. By allowing the request of pardon, the Governor can allow a person to be free from any punishment even if the Court finds him guilty of the offence. The power to grant pardon is discretionary and is not a right which can be exercised by every offender and thus the Governor has the right to decide in which cases he wants to grant pardon to a person and in which cases he does not want to grant such pardon.
- ❑ He also has the power to reprieve, commute, respite or remit the punishment of a person. Thus, in many

cases, the Governor can overturn the decision of the High Court but this power has to be exercised wisely because it can lead to a conflict between the Executive and Judiciary.

- ❑ In consultation with the State High Court, Governor looks after the appointments, postings, and promotions of the district judges.
- ❑ In consultation with the State high court and State public service commission, the Governor also appoints persons to the various judicial services.

### **Legislative Powers**

Even though the Governor is part of the Executive branch in the State, he has been given certain Legislative powers as well. These powers are as follows:

- ❑ The Governor of a State is said to be a part of the State Legislature, and so he has the right to address and send messages, summon, defer and even dissolve the State Legislature, just like the President has, in adherence to the Parliament. Although these are formal powers, in reality, the Governor is guided by the Chief Minister along with his Council of Ministers before making and executing such decisions.
- ❑ The Governor inaugurates the State Legislature, in the first session every year, and addresses the Assembly, emphasizing on the new administrative policies of the ruling government.
- ❑ He may adjourn the Houses or either House and break up the Legislative Assembly. For instance, on 12th of March, 1967, the Governor of Punjab, Dr D.C. Pavate, had prorogued the State Legislative Assembly (Legislative Assembly) which was deferred by the Speaker for two months on March 7, 1967, preceding the House could think about the Budget. This was an initial play towards an answer of established emergency that captivated the State. The disintegration of the Assembly has been finished by the Governors numerous periods.
- ❑ The Governor can address either or both of the Houses, amassed together at the beginning of the first session after each General Election and furthermore, at the initiation of the main session every year.
- ❑ He is engaged in saving specific Bills for the consent of the President like the Bills which accommodate obligatory procurement of the property or diminishing the forces of the High Court has to be saved for President's assent.
- ❑ The Governor puts forth before the State Legislature, the annual financial Statement and also makes demands for grants and recommendation of 'Money Bills'.

- ❑ The Governor constitutes the State Finance Commission and also beholds the authority to make advances out of the Contingency Fund of the State in situations leading to unforeseen circumstances.
- ❑ All bills passed by the Legislative Assembly become a law, only after the approval of the Governor of the State. In case it is not a money bill, the Governor upholds the right to send it back to the Legislative Assembly for reconsidering it. But if the Legislative Assembly sends back the Bill to the Governor again, he is bound to sign it.
- ❑ The Governor has full competency to promulgate an ordinance when the Legislative Assembly is not in session, and a law is necessitated to be brought into effect immediately. However, the ordinance is presented in the State Legislature in the next session, and remains operative for a total number of six weeks, unless it is approved by the legislature.
- ❑ If the speaker and the deputy speaker of the legislative assembly, both are absent, then Governor is empowered to appoint a person for the purpose of presiding over the session.
- ❑ Governor appoints  $\frac{1}{6}$  of the total members of the legislative Council from the fields of:
  - Literature
  - Science
  - Art
  - Cooperative Movement
  - Social Service
- ❑ The Governor has the right to consult Election Commission for the disqualification of members.
- ❑ With respect to the bill introduced in the State Legislature, the Governor can give assent, withhold his assent, Return the bill or even reserve the bill for the President's consideration.

### **Financial Powers**

The Governor enjoys the following financial powers under the Constitution:

- ❑ The demand for a grant can be made by the State only on the recommendation of the Governor.
- ❑ The Governor can ask the State Legislature for additional grants under Article 205 of the Constitution.
- ❑ To introduce a Money bill in the State Assembly, the prior recommendation of the Governor is necessary and, in its absence, no money bill can be presented in the Assembly.
- ❑ The Contingency Fund of the State can be used by the Governor at his disposal. He can use the fund to meet

any unforeseen expenditure if the State Legislature approves it.

- The recommendations of the Governor are essential for making amendments regarding financial matters.
- The Governor has the authority to ensure that the annual budget is laid before the House(s) and is also passed by it.

### ***Emergency powers***

- While the President and the Governor have been provided with similar powers under the Constitution, a Governor does not have the power to declare emergency in a State because this power is only vested in the President.
- But the Governor still plays a great role in the proclamation of emergency in a State. Under Article 356 the Governor has the power to send a report to the President when he is satisfied that the Constitutional machinery in the State has failed and the State Government can no longer function according to the provisions of the Constitution.
- Thus, the Governor plays an advisory role in the proclamation of Emergency in a State and in many cases even though President's rule is imposed in the States, it is the Governor who assumes the function of the State Government by working as an agent of the President.

### ***Ordinance making power***

Under Article 213, the Governor can issue an ordinance if the circumstances compel him to do so, when either house of the Legislative Assembly are not in session. However, there are two circumstances under which the Governor cannot issue an ordinance. They are:

- If the ordinance has certain provisions which the Governor would have reserved for the President in case it was a Bill.
- If the State Legislature has an act with similar provisions and the same would be declared invalid without the President's assent.

### ***Constitutional position of the Governor differs from the President in the following ways:***

- While the constitution envisages the possibility of the Governor (Art 163) acting at times in his discretion, no such possibility has been envisaging for the President
- After the 42nd constitutional amendment act, Ministerial advice was made binding on the

President, no such provision has been made with respect to Governor so far

### ***Provisions in Article 163***

- There shall be a Council of Ministers, led by the Chief Minister, to assist and advise the Governor in the exercise of his functions, except where he is required to exercise all or any of them at his discretion.
- If there is any doubt as to whether a matter is within the Governor's discretion or not, the Governor's decision shall be final, and the validity of anything done by the Governor shall not be called into question on the grounds that he ought or ought not to have acted in his discretion.
- The advice given to the Governor by Ministers shall not be investigated in any court.

### ***The Governor has constitutional discretions in the following cases:***

- Can dissolve the Legislative Assembly if the Chief Minister advises him to do following a vote of no confidence. Following which, it is up to the Governor what he/ she would like to do.
- Can recommend the President about the failure of the constitutional machinery in the State.
- Can reserve a bill passed by the State Legislature for President's assent.
- Can appoint anybody as Chief Minister. If there is no political party with a clear-cut majority in the assembly.
- Determines the amount payable by the Government of Assam, Meghalaya, Tripura and Mizoram to an autonomous Tribal District Council as royalty accruing from licenses for mineral exploration.
- Can seek information from the Chief Minister with regard to the administrative and legislative matters of the State.
- Can refuse to sign to an ordinary bill passed by the State Legislature.

### ***Special Responsibilities of Governor***

The constitution has also laid down certain special powers and functions possessed by the Governor in particular States which have to be exercised in consultation with the Council of Ministers in State. These include:

- Establishment of two different development boards for Vidarbha and Marathwada in the State of Maharashtra (Article 371).
- Establishment of two separate development boards for Saurashtra and Kutch in Gujarat (Article 371).
- The Governor of Nagaland has a distinctive

responsibility with regard to the law and order in the State of Nagaland for so long as in his opinion internal disturbances and disputes occurring in the Naga Hills-Tuensang Area immediately before the formation of that State has been continued. (Article 371A)

- Special powers with respect to administration of tribal areas in the State of Assam (Article 371B).
- Special powers with respect to Manipur in relation to administration of hill areas in Manipur (Article 371C)
- For peace and wellbeing and to ensure social and economic advancement of the different sections of the population in Sikkim (371F).
- With respect to law and order in the State of Arunachal Pradesh (371H).

An ordinance issued by him is subject to the same restrictions as a Parliamentary act. This means that any ordinance he issues will be null and void to the extent that it makes any provision that Parliament cannot make.	An ordinance issued by him is subject to the same restrictions as a State Legislature act. This means that any ordinance he issues will be null and void to the extent that it makes any provision that the State Legislature cannot make.
He has the right to withdraw an ordinance at any time.	He has the right to withdraw an ordinance at any time.
His ordinance-making authority is not discretionary. This means that he can only issue or withdraw an ordinance with the advice of the prime Minister's Council of Ministers.	His ordinance-making authority is not discretionary. This means that he can only issue or withdraw an ordinance on the advice of the Council, which is chaired by the Chief Minister.
When Parliament reconvenes, an ordinance issued by him should be laid before both Houses.	When the Legislative Assembly or both Houses of the State Legislature (in the case of a bicameral legislature) reconvene, an ordinance issued by him must be laid before the Legislative Assembly or both Houses of the State Legislature (in the case of a bicameral legislature).
An ordinance issued by him becomes ineffective six weeks after the reassembly of Parliament. It may be terminated earlier than the six-week period if both Houses of Parliament pass resolutions opposing it.	An ordinance issued by him becomes ineffective six weeks after the State Legislature reconvenes. It may be terminated earlier than the six-week period if the Legislative Assembly passes a resolution opposing it and the legislative Council agrees (in case of a bicameral legislature).
He doesn't need any instructions to make an ordinance.	He cannot issue an ordinance without the President's instructions in the following three cases: <ul style="list-style-type: none"> <li>• If a bill containing the same provisions would have required the President's prior approval before being introduced in the State Legislature.</li> <li>• If he thought it necessary to reserve a bill with the same provisions for the President's consideration.</li> <li>• If a State Legislature act containing the same provisions would have been invalid if it had not received the President's assent.</li> </ul>

**Comparison of Ordinance Issuing Power of President and Governor**

President	Governor
He may issue an ordinance only when both Houses of Parliament are not in session, or when one of	He can only promulgate an ordinance when the Legislative Assembly is not in session (in the case of a
the two Houses is not in session. The second provision implies that an ordinance can be promulgated by the President even when only one House is in session, because a law has to be passed by both Houses, not just one.	unicameral legislature) or when both Houses of the State Legislature are not in session (in the case of a bicameral legislature) or when either of the two Houses of the State Legislature is not in session. The final provision implies that an ordinance can be promulgated by the Governor even if only one House (in the case of a bicameral legislature) is in session, because a law can be passed by both Houses, not just one.
He can only issue an ordinance if he is convinced that circumstances exist that necessitate immediate action on his part.	He can only issue an ordinance if he is convinced that circumstances exist that necessitate immediate action on his part.
His ordinance-making authority is coextensive with Parliament's legislative authority. This means that he can only issue ordinances on subjects that the Parliament can legislate on.	His ordinance-making authority is coextensive with the State Legislature's legislative authority. This means that he can only issue ordinances on subjects that the State Legislature can legislate on.
An ordinance issued by him has the same legal force and effect as a Parliamentary act.	An ordinance issued by him has the same legal force and effect as a State Legislature act.

**Concerns related to office of Governor**

- **Appointment of Governor:** Article 155 says that Governor should be appointed (not elected) from amongst persons of high status with eminence in

public. The elected government at the State is not even consulted while making appointment of the Governors. Further successive governments have reduced this important constitutional office to a sinecure and resting place for loyal and retired / about to retired / about to retire politicians apart from docile bureaucrats.

- ❑ **Appointment and dismissal of the Chief Minister:** Governor appoints Chief Minister, other Ministers, Advocate General, Chairmen and members of the State Public Service Commission in the State. After elections in the State, there is a convention to invite the largest party to form government in the State. This convention has been flouted many times at the whim of the Governor. E.g.: the recent episode of Karnataka after 2018 hung assembly elections.
- ❑ **Reservation of Bills for Consideration of President:** As per Article 200 of the Constitution, the Governor can reserve certain types of bills passed by the State Legislature for the President's consideration. The President can either give assent to it or ask the Governor to send it back for the State Legislature to reconsider it, along with his comments. The chief intent of this provision is for the centre to keep a tab on the legislation in the interest of the nation. However, the central government, through the office of the Governor, has used this provision to serve partisan interests.
- ❑ **Misuse of Article 356:** Article 356 is the most controversial article of the Constitution. It provides for State emergency or President's rule in State if the President, on receipt of report from the Governor of a State or otherwise, is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution. The duration of such emergency is six months and it can be extended further. In the Constituent Assembly, Ambedkar had made it clear that the Article 356 would be applied as a last resort. He also hoped that "such articles will never be called into operation and that they would remain a dead letter."
- ❑ **Removal of the Governor:** Article 156 says that the Governor will hold office during the pleasure of the President for five years. President works on aid and advice of the Council of Ministers under Article 74. In effect it is the central government that appoints and removes the Governors. The Governor has no security of tenure and no fixed term of office. E.g.: The mass changing of the Governors of State whenever a

new government comes to power at Centre.

### **Major recommendations to improve Governor's office in federal polity of India:**

- ❑ **Appointment of Chief Minister during hung assembly:** Recent Karnataka case, 2018: Supreme Court observed that Governor's discretion cannot be arbitrary or fanciful.
- ❑ **SR Bommai vs. Union of India, 1994:** The case was about the limits to the Governor's powers in dismissing a State government under Article 356 of the Constitution. 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.
- ❑ **Rameshwar Prasad Case, 2006:** Supreme Court was called upon to pronounce its verdict on the validity of the proclamation of President's Rule and the dissolution of the Assembly in Bihar in 2005. The SC held that the Governor could not decide based on his subjective assessments.
- ❑ **On removal of Governor:** BP Singhal vs Union of India: The Supreme Court ruled that even though the President could dismiss a Governor without having to provide reasons for doing so, this power could not be exercised in an "arbitrary, capricious or unreasonable manner"
- ❑ **Sarkaria Commission Report (1988):** Important recommendations- Governor should be a detached figure without intense political links or should not have taken part in politics in recent past, Governors must not be removed before completion of their five-year tenure, except in rare and compelling circumstances
- ❑ **Venkatachaliah Commission (2002):** Important recommendations: Governor's appointment 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, if Governor to be removed before completion of term, the central government should do so only after consultation with the Chief Minister.
- ❑ **Punchhi Commission (2010):** The phrase "during the pleasure of the President" should be deleted from the Constitution; Governor should be removed only by a resolution of the State Legislature.

The Governor of a State isn't just a figurehead. He can practice a few powers in his prudence, and free of the suggestions made by the Chief Minister. Governor is anything but a pointless height. The Governor goes

about as the connection between the Union and the State. He goes about as the operator of the President in the country both when he goes nearly as the nominal and constitutional head of the State in typical occasions just as when he goes about as the whole head of the State amid the time of President's rule operates in the State.

The Governor relies on his prudence in informing the President for the declaration concerning an emergency in the State. He can make a decision concerning whether there has been a breakdown of constitutional machinery in the State or not. Thus, the Governor plays an important in the governance of a State in the country.