

Article 361 of Indian Constitution - Immunity shield until Governor in Office

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What's in today's article?

- Why in News?
- What is Article 361 of the Constitution?
- Supreme Court on the immunities enjoyed by the Governor

Why in News?

An employee at the Raj Bhavan in Kolkata has alleged that she was sexually harassed by West Bengal Governor C.V. Ananda Bose. The woman also lodged a complaint at the Hare Street police station in Kolkata.

Article 361 of the Constitution grants immunity to the Governor against any criminal proceedings.

What is Article 361 of the Constitution?

- **About**
 - Article 361 of the Constitution that deals with immunity to the **President** and the Governors.

- It states that they shall not be answerable:
 - to any court for the exercise and performance of the powers and duties of his office; or
 - for any act done or purporting to be done by him in the exercise and performance of those powers and duties.

- **Two crucial sub-clauses**

- Article 361 also has two crucial sub-clauses:
 - that no criminal proceedings whatsoever shall be initiated or continued against the President, or the Governor of a State, in any court during the term of his office.
 - No process for the arrest or imprisonment of the President, or the Governor of a State, shall issue from any court during his term of office.

- **Article 361 - summary**

- Article 361 grants the Governor of a State immunity from legal liability for their official acts and personal acts during their term of office.
- This means that the Governor cannot be held accountable to any court for their official duties, and no criminal proceedings can be initiated against them.
- However, civil proceedings can be brought against them for their personal acts after two months' notice.
- The Governor also cannot be arrested or imprisoned while in office.
- Additionally, if Governor commits any criminal offense during their term of office, they can be prosecuted once their term ends.
 - This ensures that they are not above the law and can be held responsible for any unlawful actions.

Supreme Court on the immunities enjoyed by the Governor

- **Rameshwar Prasad v Union of India**

- In this case, SC outlined the immunity enjoyed by the Governor even on allegation of personal malafides. It held that the Governor enjoys complete immunity.
 - Governor is not answerable to any Court for the exercise of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties.
 - This ruling is indeed not for criminal complaints but for exercising discretionary constitutional powers.

- **Precedents where criminal action was halted till a Governor completed his term in office**

- In 2017, the Supreme Court allowed fresh charges of criminal conspiracy against various leaders in the 1992 demolition of the Babri Masjid.
- However, the trial did not take place for former UP Chief Minister Kalyan Singh since he was then the Governor of Rajasthan.

Q.1. What are discretionary constitutional powers of Governors?

A governor's discretionary powers are under the authority of the executive and can be exercised whenever they see fit. These powers are constitutional and situational, and can be used to make choices. The Constitution grants these powers to the governor, but they are subject to judicial review.

Q.2. What is the primary role of the Governors in India?

The primary role of a governor in India is to protect, preserve, and defend the constitution and law. The governor's functions are outlined in Articles 153 and 154 of the Constitution of India.

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