

Governor Appointment, Qualifications, Conditions, Powers

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The **Governor** serves as the chief executive head of a state. However, like the President at the national level, the Governor acts as a titular or nominal head (constitutional head). Additionally, the Governor functions as an agent of the central government, giving the office a dual role.

While each state usually has its own Governor, the 7th Constitutional Amendment Act of 1956 allows the same person to be appointed as Governor for two or more states. Though primarily a nominal head of the state executive, the Governor holds considerable influence in the state's polity through various executive, legislative, and judicial powers.

Governor Constitutional Provisions

The Governor, along with the Chief Minister, the Council of Ministers, and the Advocate General of the state, constitute the state executive. **Articles 153 to 167** in **Part VI** of the Indian Constitution outline the structure and functions of the state executive. The constitutional provisions outlined in these articles address various aspects of the Governor's office, including appointment, qualifications, powers, functions, and other related matters.

- **Article 153:** It states that there shall be a Governor for each state. However, it also provides that nothing in this article prevents the appointment of the same person as Governor for two or more states.

Governor Appointment

The Governor is not directly elected by the people, nor is there an indirect election through a specially constituted electoral college as with the President. Instead, under Article 155, the President appoints the Governor through a **formal warrant** under his hand and seal, effectively making the Governor a nominee of the central government.

- **Supreme Court on Governor:** The Supreme Court clarified in the **Hargovind Pant Case, 1979**, that the Governor's position is **not a job** under the central government. It is an independent **constitutional office** that is neither controlled by nor subordinate to the central government.
- Furthermore, the Governor's appointment by the President of India follows the **Canadian model**, in which the central government appoints the Governor of a province or state.

Why Governor is Appointed but not Elected?

The Draft Constitution proposed a directly elected Governor through universal suffrage, but the Constituent Assembly opted for the Presidential appointment to avoid conflicts with the Chief Minister, reduce costs, and preserve the Governor's neutrality. Direct elections risked fostering separatism and prioritizing personal issues over national interests. Presidential nomination ensures qualified candidates and helps the Centre maintain stability and control during state elections.

Governor Appointment Sarkaria Commission Recommendation

The Governor ensures the **rule of law** is upheld and may suggest measures to maintain peace, security, and public order when required. According to the **Sarkaria Commission** on Centre-State Relations (1983-88), the selection and appointment of a Governor should adhere to the following guidelines:

- The appointed Governor should:
 - Be distinguished in some fields.
 - Come from outside the state.
 - Remain detached from local politics.
 - Have minimal involvement in politics, especially in recent years.
- **Political Neutrality:** A politician from the ruling central party shouldn't be appointed as Governor in a state led by a different party or coalition.
- **Constitutional Amendment for Governor Selection Process:** To ensure proper consultation with the state Chief Minister, the process of Governor selection should be included in the Constitution through an amendment to Article 155.
- **Informal Consultation:** The Prime Minister may informally consult the Vice-President and the Speaker of the Lok Sabha in selecting a Governor, though this should not be a constitutional requirement.

Governor Qualification

The Governor holds the supreme constitutional authority in the State and plays a central role in its democratic framework. Article 157 specifies only two qualifications for a person to be appointed as Governor. These are as follows:

- The individual must be a **citizen of India**.
- The individual must be at least **35 years old**.
- **Conventions in Governor Appointment:** Two conventions have emerged over time, though not consistently followed:
 - **Independence from Local Influence:** The Governor should ideally be from outside the state to remain free from local political pressures.
 - **Consultation with the Chief Minister:** The President should consult the state's Chief Minister to ensure smooth constitutional functioning.

Governor Oath or Affirmation

Before assuming office, the Governor must make and subscribe to an oath or affirmation, pledging to faithfully execute the office, to preserve, protect, and defend the Constitution and the law, and to dedicate themselves to the service and well-being of the people of the state.

- This oath is administered by the **Chief Justice of the High Court** of the concerned state, or, if unavailable, by the senior-most judge of that court.
- Moreover, any individual performing the duties of the Governor also takes a similar oath or affirmation.

Governor Conditions of the Office

Article 158 outlines the conditions for the office of the Governor. The Governor **must not be a member** of either House of Parliament or any state legislature. Upon appointment, they are deemed to have vacated their seat in the legislative body.

- Additionally, the Governor must not hold any other **office of profit**.
- The Governor is entitled to the use of their official residence, the Raj Bhavan, without paying rent.
- The Governor receives emoluments, allowances, and privileges as determined by Parliament.
- If the same individual is appointed Governor of multiple states, their emoluments and allowances are shared between those states in a proportion determined by the President.
- The Governor's emoluments and allowances cannot be reduced during their term in office.

Governor Immunities and Privileges

The Governor, like the President, is entitled to several privileges and immunities. He/She enjoys personal immunity from legal liability for official acts. During the term of the office, the Governor is **immune** from **criminal proceedings**, even for personal actions, and cannot be arrested or imprisoned. However, **civil proceedings** can be initiated against the Governor for **personal acts, provided a two-month notice** is given during their term in office.

- Article 361(1) of the Constitution states that the Governor is immune from judicial accountability for official acts, even if allegations of malafide intent arise. This was affirmed in *Rameshwar Prasad vs. Union of India* (2006).
- Article 361(2) prohibits criminal proceedings against the Governor while in office. For example, proceedings against former Rajasthan Governor Kalyan Singh in the Babri Masjid case were deferred until his term ended.

Governor Terms of Office

A Governor holds office for a term of **five years** from the date they assume office, but this term is subject to the pleasure of the President. The Governor can resign at any time by submitting a resignation letter to the President.

- **Transfer of Governor:** The President can transfer a Governor to another state, reappoint them after their term, or extend their tenure until a successor takes charge to prevent a vacancy.
- **Discharge of Governor's Duties in Exceptional Cases:** In exceptional cases, such as a Governor's death, the President may appoint the state's Chief Justice to temporarily perform their duties.
- **Removal of Governor:** The Governor serves at the President's pleasure without security of tenure, as the Constitution does not specify grounds for removal.

Governor Powers and Functions

The Governor's powers and functions are largely analogous to those of the President of India. However, the Governor does not possess diplomatic, military, or emergency powers like the President.

- **Executive Powers:** The Governor has the authority to appoint key officials such as the Chief Minister, ministers, the Advocate General, the State Election Commissioner, and the Chairman and members of the State Public Service Commission while overseeing executive actions in his/her name.
 - Additionally, he/ she can create rules for state business, seek information from the Chief Minister, and serve as the Chancellor of state universities.
 - The Governor can recommend a constitutional emergency to the President and act as the President's representative during the President's Rule.
- **Legislative Powers:** The Governor holds key legislative powers, including summoning or proroguing the legislature, addressing sessions, and appointing presiding officers and nominated members.
 - **Veto Power of Governor:** Additionally, the Governor can exercise veto power over bills, either assenting, withholding assent, returning them for reconsideration, or reserving them for the President in certain cases.
- **Financial Powers:** The Governor oversees the state budget, approves money bills and grants, and makes advances from the Contingency Fund.
 - He/She also establishes a Finance Commission every five years to review the financial position of panchayats and municipalities.
- **Judicial Powers:** The Governor has the power to grant pardons, reprieves, and commutations for sentences related to state laws and is consulted by the President on the appointment of state high court judges.
- Additionally, the Governor makes appointments, postings, and promotions of district judges in consultation with the state high court and appoints other judicial officers in consultation with the high court and the State

Governor Constitutional Position

The Constitution of India establishes a parliamentary system of government in the states, similar to that at the Centre with the Governor acting as a nominal head. The real executive power is vested in the council of ministers headed by the Chief Minister. The constitutional position of the Governor is defined by Articles 154, 163, and 164.

- **Article 154** states that the executive power of the state is vested in the Governor, who exercises it directly or through the officers' subordinates to him following the constitution.
- **Article 163** establishes a council of ministers, headed by the Chief Minister, to advise the Governor, except in matters requiring discretion.
- **Article 164** ensures that the Council of Ministers is collectively responsible to the state legislative assembly.
- **Governor v/s President over Constitutional Position:** The constitutional position of the Governor differs from that of the President in two key ways.
 - First, while the Governor may act in his discretion in certain matters, no such provision exists for the President.
 - Second, following the **42nd Constitutional Amendment** (1976), the President is bound by ministerial advice, whereas the Governor is not subject to this requirement.
 - The President can only consider a bill passed by a State Legislature if it is reserved for consideration by the Governor; the President cannot act on their own in this regard.

Governor Constitutional Discretion

The Constitution grants the Governor **final authority** in deciding whether a matter falls within his discretion, and his actions cannot be challenged on this basis. The Governor exercises constitutional discretion in situations such as reserving bills for the President's consideration and recommending the imposition of the President's Rule.

- The Governor also acts as the administrator of an adjoining union territory and exercises discretion in other constitutional matters.
- Additionally, the Governor has discretion in determining the royalty payable by certain states to **Tribal District Councils** and seeking information from the Chief Minister on state matters.

Governor Situational Discretion

The Governor, like the President, also exercises **situational discretion** (i.e. hidden discretion arises from the demands of a prevailing political situation) in cases such as appointing a Chief Minister when no party has a clear majority or when the current Chief Minister dies unexpectedly.

- Additionally, the Governor may dismiss the council of ministers if they cannot prove their majority or dissolve the state legislative assembly if the ministers lose their majority.
- **Special Responsibilities:** Moreover, the Governor has specific responsibilities to fulfil based on the President's directions. While consulting the Chief Minister-led council of ministers, the Governor ultimately acts at his/her discretion.

Governor UPSC PYQs

Question 1. With reference to the Indian polity, consider the following statements: **(UPSC Prelims 2025)**

1. The Governor of a State is not answerable to any court for the exercise and performance of the powers and duties of his/her office.
2. No criminal proceedings shall be instituted or continued against the Governor during his/her term of office.
3. Members of a State Legislature are not liable to any proceedings in any court in respect of anything said within the House.

Which of the statements given above are correct?

- a) 1 and 2 only
- b) 2 and 3 only
- c) 1 and 3 only
- d) 1, 2 and 3

Ans: (d)

Question 2. Consider the following statements: **(UPSC Prelims 2025)**

1. The Constitution of India explicitly mentions that in certain spheres, the Governor of a State acts in his/her own discretion.
2. The President of India can, of his/her own, reserve a bill passed by a State Legislature for his/her consideration without it being forwarded by the Governor of the State concerned.

Which of the statements given above is/are correct?

- a) 1 only
- b) 2 only
- c) Both 1 and 2
- d) Neither 1 nor 2

Ans: (a)

Question 3. Consider the following statements: **(UPSC Prelims 2018)**

1. No criminal proceedings shall be instituted against the Governor of a State in any court during his term of office.
2. The emoluments and allowances of the Governor of a State shall not be diminished during his term of office.

Which of the statements given above is/are correct?

- (a) 1 only
- (b) 2 only

- (c) Both 1 and 2
(d) Neither 1 nor 2

Ans: (c)

Question 4. Which of the following are the discretionary powers given to the Governor of a State? (**UPSC Prelims 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)

Question 5. Which one of the following statements is correct? (**UPSC Prelims 2013**)

- (a) In India, the same person cannot be appointed as Governor for two or more States at the same time
- (b) The Judges of the High Court of the States in India are appointed by the Governor of the State just as the Judges of the Supreme Court are appointed by the President
- (c) No procedure has been laid down in the Constitution of India for the removal of a Governor from his/her post
- (d) In the case of a Union Territory having a legislative setup, the Chief Minister is appointed by the Lt. Governor on the basis of majority support

Ans: (c)

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