

## 30 Governor

**T**he Constitution of India envisages the same pattern of government in the states as that for the Centre, that is, a parliamentary system. **Part VI of the Constitution** deals with the government in the states.

Articles 153 to 167 in Part VI of the Constitution deal 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. Thus, there is no office of vice-governor (in the state) like that of Vice-President at the Centre.

The **governor is the chief executive** head of the state. But, like the president, he is a nominal executive head (titular or constitutional head). The governor also acts as an agent of the central government. Therefore, the office of governor has a dual role.

Usually, there is a governor for each state, but the **7th Constitutional Amendment Act of 1956** facilitated the appointment of the same person as a governor for two or more states.

## APPOINTMENT OF GOVERNOR

The governor is neither directly elected by the people nor indirectly elected by a specially constituted electoral college as is the case with the president. He is appointed by the president by warrant under his hand and seal. In a way, he is a nominee of the Central government. But, as held by the Supreme Court in 1979, the office of governor of a state 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.

The Draft Constitution provided for the direct election of the governor on the basis of universal adult suffrage. But the Constituent Assembly opted for the present system of appointment of governor by the president because of the following reasons<sup>1</sup> :

1. The direct election of the governor is incompatible with the parliamentary system established in the states.
2. The mode of direct election is more likely to create conflicts between the governor and the chief minister.
3. The governor being only a constitutional (nominal) head, there is no point in making elaborate arrangements for his election and spending huge amount of money.
4. The election of a governor would be entirely on personal issues. Hence, it is not in the national interest to involve a large number of voters in such an election.
5. An elected governor would naturally belong to a party and would not be a neutral person and an impartial head.
6. The election of governor would create separatist tendencies and thus affect the political stability and unity of the country.
7. The system of presidential nomination enables the Centre to maintain its control over the states.
8. The direct election of the governor creates a serious problem of leadership at the time of a general election in the state.
9. The chief minister would like his nominee to contest for governorship. Hence, a second rate man of the ruling party is elected as governor.

Therefore, the American model, where the Governor of a state is directly elected, was dropped and the Canadian model, where the governor of a province (state) is appointed by the Governor-General (Centre), was accepted in the Constituent Assembly.

The Constitution lays down only two qualifications for the appointment of a person as a governor. These are:

1. He should be a citizen of India.

2. He should have completed the age of 35 years.

Additionally, two conventions have also developed in this regard over the years. First, he **should be an outsider**, that is, he should not belong to the state where he is appointed, so that he is free from the local politics. Second, while appointing the governor, the president is required to consult the chief minister of the state concerned, so that the smooth functioning of the constitutional machinery in the state is ensured. However, both the conventions have been violated in some of the cases.

## CONDITIONS OF GOVERNOR'S OFFICE

The Constitution lays down the following conditions for the the governor's office:

1. He **should not be a member of either House of Parliament** or a House of the state legislature. If any such person is appointed as governor, he is deemed to have vacated his seat in that House on the date on which he enters upon his office as the governor.
2. He should **not hold any other office of profit.**
3. He is entitled without payment of rent to the use of his official residence (the *Raj Bhavan*).
4. He is entitled to such emoluments, allowances and privileges as may be determined by Parliament.
5. When the same person is appointed as the governor of two or more states, the emoluments and allowances payable to him are shared by the states in such proportion as determined by the president.
6. His emoluments and allowances cannot be diminished during his term of office.

In 2018, the Parliament has increased the salary of the governor from ₹1.10 lakh to ₹3.50 lakh per month.<sup>2</sup>

Like the President, the governor is also entitled to a number of privileges and immunities. 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.

Before entering upon his office, the governor has to make and subscribe to an oath or affirmation. In his oath, the governor swears:

- (a) to faithfully execute the office;
- (b) to preserve, protect and defend the Constitution and the law; and
- (c) to devote himself to the service and well-being of the people of the state.

The oath of office to the governor is administered by the chief justice of the concerned state high court and in his absence, the senior-most judge of that court available.

Every person discharging the functions of the governor also undertakes the similar oath or affirmation.

## TERM OF GOVERNOR'S OFFICE

A governor holds office for a term of five years from the date on which he enters upon his office. However, this term of five years is subject to the pleasure of the President. Further, he can resign at any time by addressing a resignation letter to the President.

The Supreme Court held that the pleasure of the President is not justifiable. The governor has no security of tenure and no fixed term of office. He may be removed by the President at any time.<sup>3</sup>

The Constitution does not lay down any grounds upon which a governor may be removed by the President. Hence, the National Front Government headed by V.P. Singh (1989) asked all the governors to resign as they were appointed by the Congress government. Eventually, some of the governors were replaced and some were allowed to continue. The same thing was repeated in 1991, when the Congress Government headed by P.V. Narasimha Rao changed fourteen governors appointed by the V.P. Singh and Chandra Sekhar governments.

The President may transfer a Governor appointed to one state to another state for the rest of the term. Further, a Governor whose term has expired may be reappointed in the same state or any other state.

A governor can hold office beyond his term of five years until his successor assumes charge. The underlying idea is that there must be a governor in the state and there cannot be an interregnum.

The President can make such provision as he thinks fit for the discharge of the functions of the governor in any contingency not provided for in the Constitution, for example, the death of a sitting governor. Thus, the chief justice of the concerned state high court may be appointed temporarily to discharge the functions of the governor of that state.

## POWERS AND FUNCTIONS OF GOVERNOR

A governor possesses executive, legislative, financial and judicial powers more or less analogous to the President of India. However, he has no diplomatic, military or emergency powers like the president.

The powers and functions of the governor can be studied under the following heads:

1. Executive powers.
2. Legislative powers.
3. Financial powers.
4. Judicial powers.

### Executive Powers

The executive powers and functions of the Governor are:

1. All executive actions of the government of a state are formally taken in his name.
2. He can make rules specifying the manner in which the Orders and other instruments made and executed in his name shall be authenticated.
3. He can make rules for more convenient transaction of the business of a state government and for the allocation among the ministers of the said business.
4. He appoints the chief minister and other ministers. They also hold office during his pleasure. There should be a Tribal Welfare minister in the states of Chattisgarh, Jharkhand, Madhya Pradesh and Odisha appointed by him. The state of Bihar was excluded from this provision by the 94<sup>th</sup> Amendment Act of 2006.
5. He appoints the advocate general of a state and determines his remuneration. The advocate general holds office during the pleasure of the governor.
6. He appoints the state election commissioner and determines his conditions of service and tenure of office. However, the state election commissioner can be removed only in like manner and on the like grounds as a judge of a high court.
7. He appoints the chairman and members of the state public service commission. However, they can be removed only by the president and not by a governor.
8. He can seek any information relating to the administration of the affairs of the state and proposals for legislation from the chief minister.

9. He can require the chief minister to submit for the consideration of the council of ministers any matter on which a decision has been taken by a minister but which has not been considered by the council.
10. He can recommend the imposition of constitutional emergency in a state to the president. During the period of President's rule in a state, the governor enjoys extensive executive powers as an agent of the President.
11. He acts as the chancellor of universities in the state. He also appoints the vicechancellors of universities in the state.

## Legislative Powers

A governor is an integral part of the state legislature. In that capacity, he has the following legislative powers and functions:

1. He can summon or prorogue the state legislature and dissolve the state legislative assembly.
2. He can address the state legislature at the commencement of the first session after each general election and the first session of each year.
3. He can send messages to the house or houses of the state legislature, with respect to a bill pending in the legislature or otherwise.
4. He can appoint any member of the State legislative assembly to preside over its proceedings when the offices of both the Speaker and the Deputy Speaker fall vacant. Similarly, he can appoint any member of the state legislature council to preside over its proceedings when the offices of both Chairman and Deputy Chairman fall vacant.
5. He **nominates one-sixth of the members of the state legislative council** from amongst persons having special knowledge or practical experience in literature, science, art, cooperative movement and social service.
6. He can nominate one member to the state legislature assembly from the Anglo-Indian Community.
7. He decides on the question of disqualification of members of the state legislature in consultation with the Election Commission.
8. When a bill is sent to the governor after it is passed by state legislature, he can:
  - (a) Give his assent to the bill, or
  - (b) Withhold his assent to the bill, or
  - (c) Return the bill (if it is not a money bill) for reconsideration of the state legislature. However, if the bill is passed again by the state

legislature with or without amendments, the governor has to give his assent to the bill, or

- (d) Reserve the bill 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 of the following nature:<sup>4</sup>

- (i) *Ultra-vires*, that is, against the provisions of the Constitution.
- (ii) Opposed to the Directive Principles of State Policy.
- (iii) Against the larger interest of the country.
- (iv) Of grave national importance.
- (v) Dealing with compulsory acquisition of property under Article the Constitution.

9. He can promulgate ordinances when the state legislature is not in session. These ordinances must be approved by the state legislature within six weeks from its reassembly. He can also withdraw an ordinance anytime. This is the most important legislative power of the governor.
10. He lays the reports of the State Finance Commission, the State Public Service Commission and the Comptroller and Auditor-General relating to the accounts of the state, before the state legislature.

## Financial Powers

The financial powers and functions of the governor are:

- 1. He sees that the Annual Financial Statement (state budget) is laid before the state legislature.
- 2. Money bills can be introduced in the state legislature only with his prior recommendation.
- 3. No demand for a grant can be made except on his recommendation.
- 4. He can make advances out of the Contingency Fund of the state to meet any unforeseen expenditure.
- 5. He constitutes a finance commission after every five years to review the financial position of the panchayats and the municipalities.

## Judicial Powers

The judicial powers and functions of the governor are:

- 1. He can grant pardons, reprieves, respites and remissions of punishment or suspend, remit and commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the state extends.<sup>5</sup>



2. He is **consulted by the president while appointing the judges of the concerned state high court.**
3. He makes appointments, postings and promotions of the district judges in consultation with the state high court.
4. He also appoints persons to the judicial service of the state (other than district judges) in consultation with the state high court and the State Public Service Commission.

Now, we will study in detail the three important powers of the governor (veto power, ordinance-making power and pardoning power) by comparing them with that of the President.

**Table 30.1** *Comparing Veto Powers of President and Governor*

President	Governor
With Regard to Ordinary Bills	With Regard to Ordinary Bills
<p>Every ordinary bill, after it is passed by both the Houses of the Parliament either singly or at a joint sitting, is presented to the President for his assent. He has three alternatives:</p> <ol style="list-style-type: none"> <li>1. He may give his assent to the bill, the bill then becomes an act.</li> <li>2. He may withhold his assent to the bill, the bill then ends and does not become an act.</li> <li>3. He may return the bill for reconsideration of the Houses. If the bill is passed by both the Houses again with or without amendments and presented to the President for his assent, the president must give his assent to the bill. Thus the president enjoys only a 'suspensive veto'.</li> </ol>	<p>Every ordinary bill, after it is passed by the legislative assembly in case of a unicameral legislature or by both the Houses in case of a bicameral legislature either in the first instance or in the second instance, is presented to the governor for his assent. He has four alternatives:</p> <ol style="list-style-type: none"> <li>1. He may give his assent to the bill, the bill then becomes an act.</li> <li>2. He may withhold his assent to the bill, the bill then ends and does not become an act.</li> <li>3. He may return the bill for reconsideration of the House or Houses. If the bill is passed by the House or Houses again with or without amendments and presented to the governor for his assent, the governor must give his assent to the bill. Thus, the governor enjoys only a <b>'suspensive veto'.</b></li> <li>4. He may reserve the bill for the consideration of the President.</li> </ol>
When a state bill is reserved by the	When the governor reserves a bill

governor for the consideration of the President, the President has three alternatives:

- (a) He may give his assent to the bill, the bill then becomes an act.
- (b) He may withhold his assent to the bill, the bill then ends and does not become an Act.
- (c) He may return the bill for reconsideration of the House or Houses of the state legislature. When a bill is so returned, the House or Houses have to reconsider it within six months. If the bill is passed by the House or Houses again with or without amendments and presented to the president for his assent, the president is not bound to give his assent to the bill. He may give his assent to such a bill or withhold his assent.

Every money bill after it is passed by the Parliament, is presented to the President for his assent. He has two alternatives:

1. He may give his assent to the bill, the bill then becomes an act.
2. He may withhold his assent to the bill, the bill then ends and does not become an act.

Thus, the President cannot return a money bill for the reconsideration of the Parliament. Normally, the

for the consideration of the President, he will not have any further role in the enactment of the bill. If the bill is returned by the President for the reconsideration of the House or Houses and is passed again, the bill must be presented again for the presidential assent only. If the President gives his assent to the bill, it becomes an act. This means that the assent of the Governor is no longer required.

Every money bill, after it is passed by the state legislature (unicameral or bicameral), is presented to the governor for his assent. He has three alternatives:

1. He may give his assent to the bill, the bill then becomes an act.
2. He may withhold his assent to the bill, the bill then ends and does not become an act.
3. He may reserve the bill for the consideration of the president.

Thus, the governor cannot return a money bill for the reconsideration of the state legislature. Normally, the

president gives his assent to a money bill as it is introduced in the Parliament with his previous permission.

When a Money Bill is reserved by the Governor for the consideration of the President, the President has two alternatives:

- (a) He may give his assent to the bill, the bill then becomes an Act.
- (b) He may withhold his assent to the bill, the bill then ends and does not become an act.

Thus, the President cannot return a money bill for the reconsideration of the state legislature (as in the case of the Parliament).

governor gives his assent to a money bill as it is introduced in the state legislature with his previous permission.

When the governor reserves a money bill for the consideration of the President, he will not have any further role in the enactment of the bill. If the President gives his assent to the bill, it becomes an Act. This means that the assent of the governor is no longer required.

**Table 30.2** *Comparing Ordinance-Making Power of President and Governor*

President	Governor
1. He can promulgate an ordinance only when both the Houses of Parliament are not in session or when either of the two Houses of Parliament is not in session. The second provision implies that an ordinance can also be promulgated by the president when only one House is in session because a law can be passed by both the Houses and not by one House alone.	1. He can promulgate an ordinance only when the legislative assembly (in case of a unicameral legislature) is not in session or (in case of a bicameral legislature) when both the Houses of the state legislature are not in session or when either of the two Houses of the state legislature is not in session. The last provision implies that an ordinance can be promulgated by the governor when only one House (in case of a bicameral legislature) is in session because a law can be passed

	by both the Houses and not by one House alone.
2. He can promulgate an ordinance only when he is satisfied that circumstances exist which render it necessary for him to take immediate action.	2. He can promulgate an ordinance only when he is satisfied that circumstances exist which render it necessary for him to take immediate action.
3. His ordinance-making power is co-extensive with the legislative power of the Parliament. This means that he can issue ordinances only on those subjects on which the Parliament can make laws.	3. His ordinance-making power is co-extensive with the legislative power of the state legislature. This means that he can issue ordinances only on those subjects on which the state legislature can make laws.
4. An ordinance issued by him has the same force and effect as an act of the Parliament.	4. An ordinance issued by him has the same force and effect as an act of the state legislature.
5. An ordinance issued by him is subject to the same limitations as an act of Parliament. This means that an ordinance issued by him will be invalid to the extent it makes any provision which the Parliament cannot make.	5. An ordinance issued by him is subject to the same limitations as an act of the state legislature. This means that an ordinance issued by him will be invalid to the extent it makes any provision which the state legislature cannot make.
6. He can withdraw an ordinance at any time.	6. He can withdraw an ordinance at any time.
7. His ordinance-making power is not a discretionary power. This means that he <b>can promulgate or withdraw an ordinance only on the advice of the council of ministers</b> of ministers headed by the prime minister.	7. His ordinance-making power is not a discretionary power. This means that he can promulgate or withdraw an ordinance only on the advice of the council headed by the chief minister.
8. An ordinance issued by him should be laid before both the Houses of Parliament when it reassembles.	8. An ordinance issued by him should be laid before the legislative assembly or both the Houses of the state legislature

	(in case of a bicameral legislature) when it reassembles.
9. An ordinance issued by him ceases to operate on the expiry of six weeks from the reassembly of Parliament. It may cease to operate even earlier than the prescribed six weeks, if both the Houses of Parliament passes resolutions disapproving it.	9. An ordinance issued by him ceases to operate on the expiry of six weeks from the reassembly of the state legislature. It may cease to operate even earlier than the prescribed six weeks, if a resolution disapproving it is passed by the legislative assembly and is agreed to by the legislative council (in case of a bicameral legislature).
10. He needs no instruction for making an ordinance.	10. He <b>cannot make an ordinance without the instructions from the President in three cases:</b> <ol style="list-style-type: none"> <li>If a bill containing the same provisions would have required the previous sanction of the President for its introduction into the state legislature.</li> <li>If he would have deemed it necessary to reserve a bill containing the same provisions for the consideration of the President.</li> <li>If an act of the state legislature containing the same provisions would have been invalid without receiving the President's assent.</li> </ol>

**Table 30.3** *Comparing Pardoning Powers of President and Governor*

President	Governor
1. He can pardon, reprove, respite, remit, suspend or commute the	1. He can pardon, reprieve, respite, remit, suspend or

punishment or sentence of any person convicted of any offence against a Central law.	commute the punishment or sentence of any person convicted of any offence against a state law.
2. He can pardon, reprieve, respite, remit, suspend or commute a death sentence. He is the <b>only authority to pardon a death sentence.</b>	2. He cannot pardon a death sentence. Even if a state law prescribes for death sentence, the power to grant pardon lies with the President and not the governor. But, the governor can suspend, remit or commute a death sentence.
3. He can grant pardon, reprieve, respite, suspension, remission or commutation in respect to punishment or sentence by a court-martial (military court).	3. He does not possess any such power.

## CONSTITUTIONAL POSITION OF GOVERNOR

The Constitution of India provides for a parliamentary form of government in the states as in the Centre. Consequently, the governor has been made only a nominal executive, the real executive constitutes the council of ministers headed by the chief minister. In other words, the governor has to exercise his powers and functions with the aid and advice of the council of ministers headed by the chief minister, except in matters in which he is required to act in his discretion (i.e., without the advice of ministers).

In estimating the constitutional position of the governor, particular reference has to be made to the provisions of Articles 154, 163 and 164. These are:

- (a) The executive power of the state shall be vested in the governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution (Article 154).
- (b) There shall be a council of ministers with the chief minister as the head to aid and advise the governor in the exercise of his functions, except in so far as he is required to exercise his functions in his discretion (Article 163).
- (c) The council of ministers shall be collectively responsible to the legislative assembly of the state (Article 164). This provision is the foundation of the parliamentary system of government in the state.

From the above, it is clear that constitutional position of the governor differs from that of the president in the following two respects:<sup>6</sup>

1. While the Constitution envisages the possibility of the governor acting at times in his discretion, no such possibility has been envisaged for the President.
2. After the 42nd Constitutional Amendment (1976), ministerial advice has been made binding on the President, but no such provision has been made with respect to the governor.

The Constitution makes it clear that if any question arises whether a matter falls within the governor's discretion or not, the decision of the governor is final and the validity of anything done by him cannot be called in question on the ground that he ought or ought not to have acted in his discretion. The governor has constitutional discretion in the following cases:

1. Reservation of a bill for the consideration of the President.
2. Recommendation for the imposition of the President's Rule in the state.
3. While exercising his functions as the administrator of an adjoining union territory (in case of additional charge).

4. Determining 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<sup>7</sup>.
5. Seeking information from the chief minister with regard to the administrative and legislative matters of the state.

In addition to the above constitutional discretion (i.e., the express discretion mentioned in the Constitution), the governor, like the president, also has situational discretion (i.e., the hidden discretion derived from the exigencies of a prevailing political situation) in the following cases:

1. Appointment of chief minister when no party has a clear-cut majority in the state legislative assembly or when the chief minister in office dies suddenly and there is no obvious successor.
2. Dismissal of the council of ministers when it cannot prove the confidence of the state legislative assembly.
3. Dissolution of the state legislative assembly if the council of ministers has lost its majority.

**Table 30.4** *Articles Related to Governor at a Glance*

Article No.	Subject Matter
153.	Governors of states
154.	Executive power of state
155.	Appointment of Governor
156.	Term of office of Governor
157.	Qualifications for appointment as Governor
158.	Conditions of Governor's office
159.	Oath or affirmation by the Governor
160.	Discharge of the functions of the Governor in certain contingencies
161.	Power of the Governor to grant pardons and others
162.	Extent of executive power of state
163.	Council of ministers to aid and advise the Governor
164.	Other provisions as to ministers like appointments, term, salaries, and others
165.	Advocate-General for the state
166.	Conduct of business of the government of a state
167.	Duties of the Chief Minister regarding furnishing of information to the Governor, and so on



174.	Sessions of the state legislature, prorogation and dissolution
175.	Right of the Governor to address and send messages to the house or houses of state legislature
176.	Special address by the Governor
200.	Assent to bills (i.e. assent of the Governor to the bills passed by the state legislature)
201.	Bills reserved by the Governor for consideration of the President
213.	Power of Governor to promulgate ordinances
217.	Governor being consulted by the President in the matter of the appointments of the judges of the High Courts
233.	Appointment of district judges by the Governor
234.	Appointments of persons (other than district judges) to the judicial service of the state by the Governor.

Moreover, the governor has certain special responsibilities to discharge according to the directions issued by the President. In this regard, the governor, though has to consult the council of ministers led by the chief minister, acts finally on his discretion. They are as follows:

1. Maharashtra—Establishment of separate development boards for Vidarbha and Marathwada.
2. Gujarat—Establishment of separate development boards for Saurashtra and Kutch.
3. Nagaland—With respect to law and order in the state for so long as the internal disturbance in the Naga Hills-TUensang Area continues.
4. Assam—With respect to the administration of tribal areas.
5. Manipur—Regarding the administration of the hill areas in the state.
6. Sikkim—For peace and for ensuring social and economic advancement of the different sections of the population.
7. Arunachal Pradesh—With respect to law and order in the state.
8. Karnataka - Establishment of a separate development board for Hyderabad-Karnataka region<sup>8</sup>.

Thus, the Constitution has assigned a dual role to the office of a governor in the Indian federal system. He is the constitutional head of the state as well as the representative of the Centre (i.e., President).

## NOTES AND REFERENCES

1. *Constituent Assembly Debates*, Volume IV, pp. 588–607.
2. Vide the Finance Act, 2018, with effect from 1<sup>st</sup> January, 2016. This Act amended the Governor's (Emoluments, Allowances and Privileges) Act, 1982.
3. *Surya Narain v Union of India*, (1982).
4. Soli Sorabji, *The Governor: Sage or Saboteur*, Roli Books (New Delhi), 1985, p. 25.
5. For the meanings of these legal terms, see 'Pardoning Power of the President' under [Chapter 17](#).
6. M.P. Jain, *Indian Constitutional Law*, Wadhwa, Fourth Ed, p. 186.
7. Paragraph 9(2) of the Sixth Schedule says: 'If any dispute arises as to the share of such royalties to be made over to a district council, it shall be referred to the governor for determination and the amount determined by the governor in his discretion shall be deemed to be the amount payable to the district council and the decision of the governor shall be final'. The Sixth Schedule contains the provisions as to the administration of tribal areas in the States of Assam, Meghalaya, Tripura and Mizoram.
8. This provision was added by the 98<sup>th</sup> Constitutional Amendment Act of 2012.