



Appointment of Governors

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Why in News: Recently, the Centre announced that twelve states and the Union Territory of Ladakh will have new Governors. This includes both first-time appointments as well as transfers of Governors from one state to the other.

13 APPOINTMENTS: SIX NEW FACES, SEVEN TRANSFERS

 Lt Gen KT Parnaik (retired) Arunachal Pradesh	 C P Radhakrishnan Jharkhand	 Shiv Pratap Shukla Himachal Pradesh	 Gulab Chand Kataria Assam	
 Justice S Abdul Nazeer (retired) Andhra Pradesh	 Lakshman Prasad Acharya Sikkim	 Ramesh Bais Maharashtra	 Brig B D Mishra (retired) L-G Ladakh	
Biswa Bhusan Harichandan, Chhattisgarh	Anusuiya Uikey, Manipur	La Ganesan, Nagaland	Phagu Chauhan, Meghalaya	Rajendra Vishwanath Arlekar, Bihar

Appointment of Governor of a State: Constitutional Provisions

Article 153 of the Constitution says “There shall be a Governor for each State.”

A few years after the commencement of the Constitution, an amendment in 1956 laid down that “nothing in this article shall prevent the appointment of the same person as Governor for two or more States”.

Article 155 says that the “Governor of a State shall be appointed by the President by warrant under his hand and seal”.

Under Article 156, “the Governor shall hold office during the pleasure of the President”, but his normal term of office will be five years. If the President withdraws her pleasure before the completion of five years, the Governor has to step down.

Since the President acts on the aid and advice of the Prime Minister and the Union Council of Ministers, in effect, the Governor is appointed and removed by the central government.

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Articles 157 and 158 lay down the qualifications of the Governor and the conditions of his office. The Governor must be a citizen of India and should have completed the age of 35 years.

The Governor should not be a Member of Parliament or a state legislature, and must not hold any other office of profit.

Relationship between the Governor and the state government

The position of the Governor is envisaged as an apolitical head who must act on the advice of the Council of Ministers of the state.

However, the Governor enjoys certain powers under the Constitution such as

giving or withholding assent to a Bill passed by the state legislature

determining the time needed for a party to prove its majority in the state Assembly

in cases such as a hung verdict in an election, which party must be called first to prove its majority

These powers make his position very significant.

Over the decades, Governors have been seen as acting on the behest of the central government in power at the time, and have been accused by state governments, especially those in opposition, as acting as “agents of the Centre”.

Also, the Constitution lays down no provisions for the manner in which the Governor and the state must engage publicly when there is a difference of opinion. This has traditionally been guided by respect for each other’s boundaries.

Of late, however, there have been bitter and acrimonious exchanges between state governments and Governors, with Governors such as the current Raja Sabha Chairman Jagdeep Dhankhar, R N Ravi, and Arif Mohammed Khan have been accused of partisan conduct by the Chief Ministers of West Bengal, Tamil Nadu, and Kerala respectively.

Reason for friction between Governor and State government

The Constituent Assembly envisaged governor to be apolitical. But politicians become Governors and then resign to fight elections

The CM is answerable to the people. But the Governor is answerable to no one except the Centre.

Indeed, there is no provision for impeaching the Governor, and in the event of a particularly bitter and prolonged tussle between the state and central governments, the Centre can, up to five years, use Raj Bhavan to indefinitely create problems for the state.

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.

In recent years, these have been largely about the selection of the party to form a government, deadline for proving majority, sitting on Bills, and passing negative remarks on the state administration.

Examples of recent controversy

In November 2018, then J&K Governor Satyapal Malik dissolved the Assembly amid indications that various parties were coming together to form the government. This paved the way for the Centre to later bifurcate state into two Union territories, by considering the Governor as the government.

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In November 2019, after a hung verdict in Maharashtra, Governor Bhagat Singh Koshiyari quietly invited BJP leader Devendra Fadnavis and administered him oath as CM. This government lasted just 80 hours. Six months later, Koshiyari refused to nominate CM Uddhav Thackeray to the Legislative Council, leading Thackeray to meet PM Narendra Modi to resolve the issue.

In West Bengal, Dhankhar has often commented on law and order and political violence. Ravi, in his previous stint as Nagaland Governor, had criticised affairs of the state and allegedly interfered in administration.

In December 2020, Kerala Governor Arif Mohammed Khan turned down a request to summon a special sitting of the Assembly to debate the three central farm laws.

Following the Karnataka polls in 2018, Governor Vajubhai Vala invited the BJP to form the government and gave B S Yeddyurappa 15 days to prove majority. Challenged by Congress and JDS in the Supreme Court, it was reduced to three days.

Judicial verdict over the office of Governor

Since the Governor holds office “on the pleasure of the President”, questions have been raised time and again on whether the Governor has any security of tenure, and if the President is obligated to show reasons for recalling a Governor.

In Surya Narain Choudhary vs Union of India (1981), the Rajasthan High Court held that the pleasure of the President was not justiciable, the Governor had no security of tenure and can be removed at any time by the President withdrawing pleasure.

In BP Singhal vs Union of India (2010), the Supreme Court elaborated on the pleasure doctrine. It upheld that “no limitations or restrictions are placed on the ‘at pleasure’ doctrine”, but that “does not dispense with the need for a cause for withdrawal of the pleasure”.

This ruling had come in response to a PIL filed by BJP leader BP Singhal, who had challenged the removal of the Governors of Uttar Pradesh, Gujarat, Haryana and Goa on May 2, 2004 by the President on the advice of the newly formed UPA government.

In its judgment, the Bench, while noting that the President can remove the Governor from office “at any time without assigning any reason and without giving any opportunity to show cause”, the power to remove can’t be exercised in an “arbitrary, capricious or unreasonable manner”.

“The power will have to be exercised in rare and exceptional circumstances for valid and compelling reasons... A Governor cannot be removed on the ground that he is out of sync with the policies and ideologies of the Union Government or the party in power at the Centre. Nor can he be removed on the ground that the Union Government has lost confidence in him,” the Bench ruled.

The Bench held that the court will presume that the President had “compelling and valid” reasons for the removal but if a sacked Governor comes to the court, the Centre will have to justify its decision.

After this, in 2014, when the BJP government came to power, it was claimed that the central government was pushing Governors to quit on their own, instead of recalling them. In August 2014, the Supreme Court agreed to examine a petition by then Uttarakhand governor Aziz Qureshi, challenging the NDA government’s push to make him quit the post.

Various commission recommendations

Over the years, several panels and commissions have recommended reforms in how Governors are appointed and how they function, such as the Administrative Reforms Commission of 1968, the Sarkaria Commission of 1988,

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and the National Commission to Review the Working of the Constitution, headed by retired CJI M N Venkatchaliah, in 2001.

These committees recommended reforms, such as selection of the Governor through a panel comprising the PM, Home Minister, Lok Sabha Speaker and the CM, apart from fixing his tenure for five years.

The Sarkaria Commission had recommended that Governors are not sacked before completing their five-year tenure, except in “rare and compelling” circumstances.

The M.M. Punchhi Commission, the last Centre-State Commission to go into the issue, recommended that ‘the governor should be a detached person and not too intimately connected with the local politics of the state. Accordingly, the governor must not have participated in active politics at the Centre or State or local level for at least a couple of years before his appointment.

Recommendations have also been made for a provision to impeach the Governor by the Assembly. However, none of these have been implemented.

The Way ahead

By considering the various recommendations suggested by different commissions and the judiciary, the central government should take the necessary steps to reform the office of governor in order ensure the independent and impartial functioning of the office of Governor and also to uphold the doctrine of federalism