

## UPSC Civil Services Examination

### Political Science & International Relations

#### Topic: Governor - Power, Tenure, Qualifications, Appointment Indian Polity Notes

Topics covered are:

|   |
|---|
| Who is a Governor? <ul style="list-style-type: none"><li>• How is a Governor Appointed?</li><li>• What is the term of Governor's office?</li></ul>  |
| Who is qualified to become a Governor? <ul style="list-style-type: none"><li>• What are the conditions of his office?</li></ul>   |
| What are the powers and functions of Governor? <ul style="list-style-type: none"><li>• Executive Powers of the Governor</li><li>• Legislative Powers of the Governor</li><li>• Financial Powers of the Governor</li><li>• Judicial Powers of the Governor</li></ul> |
| What is the Constitutional Position of Governor? <ul style="list-style-type: none"><li>• Governor's Discretionary Powers</li></ul>  |
| Important Constitutional Articles related to the Governor   |

#### Who is a Governor?

Governor is a nominal executive head of the state. He forms an important part of the state executive where he acts as the chief executive head. Central Government nominates the governor for each state.

#### How is a Governor Appointed?

The Indian President appoints Governor for each state by warrant under his hand and seal. Central Government is responsible to nominate the governor for each state.

**Note:**

- Unlike elections of President, there is no direct or indirect election for the post of Governor.
- Office of a governor is not a part of union executive and is an independent constitutional office. The governor doesn't serve the union government and neither is subordinate to it.
- The nomination of a governor by the Union and his appointment by the President in India is based on the Canadian model of government.

## What is the term of Governor's office?

Since the Governor holds the office under the pleasure of the President, his office has no fixed term. President can remove the Governor and the grounds upon which he may be removed are not laid down in the constitution. Governor may also get transferred from one state to another by the President. He also can be reappointed.

**Note:**

- An interregnum is not allowed; following which a Governor may sit in the office beyond 5 years (expiry of the term) till the new governor assumes the charge of the office.
- On President's discretion, Chief Justice of the High Court of the concerned state can also be appointed as the Governor on a temporary basis when and how the President thinks fit. (Example - On the governor's death, Chief Justice of HC can be appointed as the governor.)

## Who is qualified to become a Governor?

Unlike Lok Sabha or Rajya Sabha members or even in the case of Prime Minister or President who have a set of qualifications to meet to hold the office; Governor has to meet only two qualifications:

1. He should be an Indian Citizen
2. He should be 35 years old or more

**Note:** There are two conventions that the government follow before nominating a person as a Governor:

1. That person is not appointed as the governor who belongs to the state. He shall be an outsider having no relation with the state he is being appointed to.
2. Consultation of the Chief Minister is taken by the President before appointing a governor

It should also be noted that both the above conventions are not absolute and have been ignored by the union government in many instances.

## What are the conditions of his office?

There are a few conditions for a person to be appointed as a Governor:

1. He cannot be a member of Lok Sabha and Rajya Sabha. If he has been a member of either of the house, he should vacate the seat on his first day as Governor in the office.
2. He should not hold any office of profit.
3. For his residence, Raj Bhavan is provided to him without the payment of rent.
4. Parliament decides his emoluments, allowances and privileges.
5. When a governor is responsible for two or more states, the emoluments and allowances payable to him are shared by the states in such proportion as the President may determine.
6. Parliament cannot diminish his emoluments and allowances during his term of office.
7. He is given immunity from any criminal proceedings, even in respect of his personal acts
8. Arrest or imprisonment of Governor cannot take place. Only civil proceedings can be initiated for his personal acts that too after giving two months' of prior notice.

## What are the powers and functions of Governor?

### Executive Powers of the Governor

The following comes under his executive powers:

1. Every executive action that the state government takes, is to be taken in his name.
2. How an order that has been taken up his name is to be authenticated, the rules for the same can be specified by the Governor.
3. He may/may not make rules to simplify the transaction of business of the state government.
4. Chief Ministers and other ministers of the states are appointed by him.

5. It is his responsibility to appoint Tribal Welfare Minister in the states of:
  - a. Chhattisgarh
  - b. Jharkhand
  - c. Madhya Pradesh
  - d. Odisha
6. He appoints the advocate general of states and determines their remuneration
7. He appoints the following people:
  - . State Election Commissioner
  - a. Chairman and Members of the State Public Service Commission
  - b. Vice-Chancellors of the universities in the state
8. He seeks information from the state government
9. A constitutional emergency in the state is recommended to the President by him.
10. The governor enjoys extensive executive powers as an agent of the President during the President's rule in the state.

## Legislative Powers of the Governor

The following are the legislative powers of the governor:

1. It's in his power to prorogue the state legislature and dissolve the state legislative assemblies
  2. He addresses the state legislature at first session of every year
  3. If any bill is pending in the state legislature, Governor may/may not send a bill to the state legislature concerning the same
  4. If the speaker of the legislative assembly is absent and same is Deputy Speaker, then Governor appoints a person to preside over the session
  5. As President nominates 12 members in Rajya Sabha, Governor appoints  $\frac{1}{6}$  of the total members of the legislative council from the fields of:
    - a. Literature
    - b. Science
    - c. Art
    - d. Cooperative Movement
    - e. Social Service
  6. As President nominates 2 members in the Lok Sabha, Governor nominates 1 member in state legislative assembly from Anglo-Indian Community.
  7. He can consult Election Commission for the disqualification of members
  8. With respect to the bill introduced in the state legislature, he can:
    - . Give his assent
    - a. Withhold his assent
    - b. Return the bill
    - c. Reserve the bill for the President's consideration (In instances where the bill introduced in the state legislature endangers the position of state High Court.)
- Note: Governor can reserve the bill for the President's consideration in the following cases:
- When provisions mentioned in the bill violates the constitution (Ultra-Vires)
  - When provisions mentioned in the bill oppose Directive Principles of State Policy
  - When provisions mentioned in the bill hinders the larger interests of the country
  - When provisions mentioned in the bill concern the national importance
9. When provisions mentioned in the bill mention the acquisition of property that is dealt with Article 31A in the constitution.
  10. An ordinance can be promulgated by him when either Legislative Assembly or Council (Unicameral/Bicameral) are not in session.
  11. The following reports are laid by him:

- a. State Finance Commission
- b. State Public Service Commission
- c. Comptroller and Auditor General (Concerning the state finance)

## Financial Powers of the Governor

The following are the financial powers and functions of the Governor:

1. He looks over the state budget being laid in the state legislature
2. His recommendation is a prerequisite for the introduction of money bill in the state legislature
3. He recommends for demand for grants which otherwise cannot be given
4. Contingency Fund of State is under him and he makes advances out that to meet unforeseen expenditure
5. State Finance Commission is constituted every five years by him.

## Judicial Powers of the Governor

The following are the judicial powers and functions of the Governor:

1. He has following pardoning powers against punishment:
  - a. Pardon
  - b. Reprieve
  - c. Respite
  - d. Remit
  - e. Commute
2. President consults the Governor while appointing judges of High Court
3. In consultation with state High Court, Governor makes appointments, postings and promotions of the district judges
4. In consultation with the state high court and state public service commission, he also appoints persons to the judicial services.

## What is the Constitutional Position of Governor?

The Constitutional position of governor can be understood by the following articles:

| Constitutional Position of the Governor |   |
|---|---|
| Article                                 | Provision   |
| Article 154                             | He is the executive head of the state. All the executive functions will be performed by him or by the officers subordinate to him in accordance with the Constitution   |
| Article 163                             | <p>He will aided and advised by the Chief Minister and Council of Ministers <b>unless he is performing a function at his own discretion</b></p> <p><b>Note:</b></p> <ul style="list-style-type: none"> <li>The power to act at his own discretion is a power that is not given to the President.</li> <li>42nd Amendment Act made the advice of Council of Ministers binding on the President but not on the Governor in state</li> </ul> |
| Article 164                             | <p>Council of Ministers are collectively responsible to the state legislative assembly</p> <p><b>Note:</b> This provision is the foundation of state parliamentary system</p>   |

The Constitution has mentioned the authority of the governor to decide the validity of his actions taken in his own discretion in circumstances where his actions are called into action.

## Governor's Discretionary Powers

The Governor of state, unlike the President of India, is conferred with power to act at his own discretion. There are two categories of discretion for the governor. One is Constitutional Discretion and the other is Situational Discretion.

## Important Constitutional Articles related to the Governor

IAS aspirants should know the articles in the constitution that are related to the governor:

| Articles | Provisions   |
|----------|--|
| 153      | Governors of states  |
| 155      | Appointment of Governor  |
| 156      | Term of office of Governor   |
| 157      | Qualifications for appointment as Governor   |
| 158      | Conditions of Governor's office  |
| 160      | Discharge of the functions of the Governor in certain contingencies  |
| 161      | Power of the Governor to grant pardons and others  |
| 175      | Right of the Governor to address and send messages to the house or houses of the state legislature           |
| 176      | Special address by the Governor  |
| 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    |