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**Paper-2**

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Part - 35

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# Easy to PICK UPSC “PT” DNA GOVERNOR

The Indian Constitution envisions a Parliamentary system of administration in the States, similar to that of the Centre. The Government of the States is dealt with under Part VI of the Constitution in which **Articles 153 to 167 deal with the State executive.**

The Governor, the Chief Minister, the Council of Ministers, and the State's Advocate General make up the State executive. There is no vice-governorship (in the state) comparable to the Vice-Presidency at the Union level.

## 1. Appointment of Governors-

- The governor is appointed by the president under his hand and seal
- The SC in 1979 said that the office of governor 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

## Reason for adopting this system of appointment of governor

- Direct elections would be incompatible with the parliamentary system established in the states
- Direct election could create conflicts
- Direct election would be a costly affair
- An elected governor could be a non-neutral person
- The system of presidential nomination enables the centre to maintain its control over the states
- Keeping in mind, the above mentioned reasons, the appointment form of appointing the governor was taken (This model is followed in Canada)

## Qualifications Required-

- He should be a citizen of India
- He should have completed the age of 35 years

## Conventions that have developed while appointing a governor-

- He should be not from a state where he is appointed
- While appointing the governor, the president is required to consult the CM of the state concerned

## Conditions of the governor's office-

- He should not be member of either house of Parliament or a house of the state legislature. If any such person is elected as governor, he is deemed

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to have vacated his seat in that house on the date which he enters upon his office

- He should not hold an office of profit
- He is entitled, without payment of rent, to the use of his official residence
- He is entitled to such emoluments, allowances and privileges as may be determined by Parliament
- His emoluments and allowances cannot be diminished during his term of office
- If he is appointed as the governor of two or more states, his salary and allowances payable to him are shared by the states in such proportion as determined by the president

## **Immunity-**

- 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
- **The oath of office to the governor is administered by the Chief Justice of the concerned High Court**

## **Term of governor’s office-**

- He holds the office for a term of five years
- However, his term is subjected to the pleasure of the President
- The constitution has not laid down any grounds for the removal of the governor by president
- **A governor can also hold office beyond his term until his successor assumes charge**

## **Important Constitutional provisions about the Governor-**

- **Background:** The office of the governor has been **borrowed from the Government of India Act 1935**. He is to be appointed by the president of India.

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- Unlike the British Indian government, the governor is a nominal head of a state. Like president at the centre, s/he is expected to act on the aid and advice of the Council of Ministers (COM) state, barring few constitutional and situational discretions.
- **Article 163:** It is the source of all discretionary powers of the governor, resulting in conflict with elected state executives and legislature.
- **Article 153:** Governor for each State or two or more States.
- **Article 256:** The executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.
- **Emergency powers (Art 356):** Governor can recommend imposition of emergency in the state on grounds of failure of constitutional machinery in the state and issues the proclamation, after obtaining the consent of the President of India.
- **Act as a bridge between states and union government:** Constitution makers imagined governor to be a common link between center and states, ensuring the smooth functioning of the democratic government in the state.

## Powers of Governor

The State's Governor will have **executive, legislative, financial, and judicial powers**. He **does not**, however, **have the diplomatic, military, or emergency powers** like India's President possesses.

### Executive Powers

- In the name of the Governor, the **council of ministers exercises the executive functions**. As a result, the Governor is simply a ceremonial head, while the Council of Ministers is the real executive.
- He/she is the **State's constitutional head** and picks the majority party's leader as the Chief minister.
- He/she can ask the Chief Minister for any information that he/she wants.
- The Governor **appoints the State's Attorney General**, chairman, and members of the State Public Service Commission.
- He/she has the authority to recommend to the President that a constitutional emergency be declared in the State.

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- As an agent of the President, the Governor has significant executive powers during the President's administration in the State.

## Legislative Powers

- The Governor is **part of the State Legislature** and no bill cannot become a law until he/she signs it.
- He/she can withhold a bill and send it to the President for consideration.
- He/she can also **dissolve the State Assembly before the expiry of its term** on the advice of the Chief Minister or as directed by the President.
- He/she causes the annual Budget to be presented in the State Legislative Assembly.

## Judicial Powers

- The Governor **appoints the district judges** and is consulted in the appointment of the judges of the High Court by the President.
- He/she can, **pardon, remit and commute the sentence of a person** convicted by a State court.

## Financial Powers

- He/she causes the annual budget to be laid before the State Legislative Assembly.
- No money bill can be introduced in the State Legislative Assembly without the Governor's prior approval.

## Discretionary Powers

The Governor has the following discretionary powers:

- **If no party receives an absolute majority**, the Governor can choose the Chief Minister at his/her discretion.
- **In an emergency**, he/she can override the advice of the council of ministers and in such situations, he/she acts as the President's agent and becomes the true ruler of the State.
- He/she utilizes the discretionary authority to submit a report to the President on the State's activities.
- He/she can also withhold assent to a bill and refer it to the President for approval.

**The governor has constitutional discretions in the following cases:**

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- **Can dissolve the legislative assembly** if the chief minister advises him to do following a vote of no confidence. Following which, it is up to the Governor what he/ she would like to do.
- **Can recommend the president about the failure of the constitutional machinery** in the state.
- **Can reserve a bill** passed by the state legislature for president’s assent.
- **Can appoint anybody as chief minister** If there is no political party with a clear-cut majority in the assembly.
- **Determines 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.
- **Can seek information from the chief minister** with regard to the administrative and legislative matters of the state.
- **Can refuse to sign to an ordinary bill** passed by the state legislature.

## Issues related to Office of Governor-

- **Appointment of Governor: Article 155** says that governor should be appointed (not elected) from amongst persons of high status with eminence in public. The elected government at the state is not even consulted while making appointment of the Governors. Further successive governments have reduced this important constitutional office to a sinecure and resting place for loyal and retired / about to retired / about to retire politicians apart from docile bureaucrats.
- **Appointment and dismissal of the Chief Minister:** Governor appoints Chief Minister, other ministers, Advocate General, Chairmen and members of the State Public Service Commission in the state. After elections in the state, there is a convention to invite the largest party to form government in the state. This convention has been flouted many times at the whim of the governor. E.g.: the recent episode of Karnataka after 2018 hung assembly elections.
- **Reservation of Bills for Consideration of President:** As per **Article 200** of the Constitution, the governor can reserve certain types of bills passed by the State Legislature for the President’s consideration.

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The President can either give assent to it or ask the governor to send it back for the state legislature to reconsider it, along with his comments. The chief intent of this provision is for the centre to keep a tab on the legislation in the interest of the nation. However, the central government, through the office of the governor, has used this provision to serve partisan interests.

- **Misuse of Article 356:** Article 356 is the most controversial article of the Constitution. It provides for State emergency or President’s rule in State if the President, on receipt of report from the Governor of a State or otherwise, is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution. The duration of such emergency is six months and it can be extended further. In the Constituent Assembly, Ambedkar had made it clear that the Article 356 would be applied as a last resort. He also hoped that” such articles will never be called into operation and that they would remain a dead letter.”
- **Removal of the Governor: Article 156** says that the governor will hold office during the pleasure of the President for five years. President works on aid and advice of the Council of Ministers under Article 74. In effect it is the central government that appoints and removes the Governors. The governor has no security of tenure and no fixed term of office. E.g.: The mass changing of the governors of state whenever a new government comes to power at Centre.

## What are the current tussles between the Governor and Chief Minister?

- **West Bengal-** The Governor Dhankhar has been accused of summoning the Chief Secretary and the Director General of Police on a regular basis
- When they do not turn up, he takes up the matter to Twitter often tagging the Chief Minister.
- Mr. Dhankhar also had a run-in with Assembly Speaker Biman Banerjee recently, on the premises of the State Assembly.
- He has withheld assent to the Howrah Municipal Corporation (Amendment) Bill 2021, delaying polls to the civic body.

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- He has made allegations of impropriety in welfare schemes and has questioned the Government claims about investments in the State.
- **Maharashtra**- Governor Bhagat Singh Koshyari has stalled the election of Speaker since the post fell vacant in February 2021.
- The Governor’s view that the State Assembly cannot decide its own rules is unacceptable to the ruling coalition.
- He had refused to accept the recommendation of the Council of Ministers on the nomination of 12 members to the Legislative Council, until the matter reached the High Court.
- **Tamil Nadu**- Governor R.N. Ravi has not acted upon the T.N. Admission to Undergraduate Medical Degree Courses Bill, adopted by the Assembly in September 2021.
- The Governor is required to either send it to the President of India for approval or return it for reconsideration by the Assembly, but the indefinite delay in taking a decision is undermining the legislature.

## **Has any efforts been taken to solve the tussle game?**

### **The Administrative Reforms Commission (1968)**

- **President’s rule**- It recommended that the report of the governor regarding the President's rule has to be objective and also the governor should exercise his own judgment in this regard.

### **Rajamannar Committee (1971)**

- **Role of Governor**- The Rajamannar Committee stressed that the Governor of the state should not consider himself as an agent of the centre but play his role as the constitutional head of the State.

### **Sarkaria Commission recommendations- 1983**

- **Hung assembly**- It provided the order of preference the Governor should follow in selecting a CM in such a situation
  1. An alliance of parties that was formed prior to the elections.
  2. The single largest party staking a claim to form the government with the support of others, including independents.
  3. A post-electoral coalition of parties, with all the partners in the coalition joining the government.

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4. A post-electoral alliance of parties, with some of the parties in the alliance forming a government and the remaining parties, including independents, supporting the government from outside.

- **Appointment of Governor**- CM should be consulted in the Governor’s appointment.
- **Dismissal of Council of Ministers**- The Governor cannot dismiss the Council of ministers when it commands a majority.

## **S.R. Bommai Judgment (1994)**

- **President’s rule**- The Supreme Court classified the instances of failure of constitutional machinery into four heads- Political crises, Internal subversion, Physical breakdown, Non-compliance with constitutional directions of the Union Executive
- The verdict allows the Supreme Court to investigate claims of malafide in the Governor’s report.

## **Punchhi Commission recommendations (2007)**

- The Punchhi Commission on Centre-State Relations said that the governor should invite the leader of “a pre-poll alliance commanding the largest number” or the “largest single party” to form the government in case no party or pre-poll coalition has a clear majority.

## **Major recommendations to improve Governor’s office in federal polity of India:**

- On Appointment of CM during hung assembly: Recent Karnataka case, 2018: SC observed that Governor’s discretion cannot be arbitrary or fanciful.
- **SR Bommai vs. Union of India, 1994:** The case was about the limits to the Governor’s powers in dismissing a state government under Article 356 of the Constitution. The floor of the Assembly is the only forum that should test the majority of the government of the day, and not the subjective opinion of the Governor.
- **Rameshwar Prasad Case, 2006:** Supreme Court was called upon to pronounce its verdict on the validity of the proclamation of President’s Rule and the dissolution of the Assembly in Bihar in 2005. The SC held that the Governor could not decide based on his subjective assessments.

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- **On removal of governor:** BP Singhal vs Union of India: The Supreme Court ruled that even though the President could dismiss a Governor without having to provide reasons for doing so, this power could not be exercised in an “arbitrary, capricious or unreasonable manner”
- **Sarkaria Commission Report (1988):** Important recommendations- Governor should be a detached figure without intense political links or should not have taken part in politics in recent past, Governors must not be removed before completion of their five-year tenure, except in rare and compelling circumstances
- **Venkatachaliah Commission (2002): Important recommendations:** Governor’s appointment should be entrusted to a committee comprising the prime minister, the home minister, the speaker of the Lok Sabha and the chief minister of the concerned state, if governor to be removed before completion of term, the central government should do so only after consultation with the Chief Minister.
- **Punchhi Commission (2010):** The phrase “during the pleasure of the President” should be deleted from the Constitution; Governor should be removed only by a resolution of the state legislature.
- **The Supreme Court Judgment (BP Singhal case)** which curtailed the power of the Centre to dismiss state governments arbitrarily is commendable. Further the removal of governor from office must entail impeachment proceedings in the state assembly.
- **Governor’s office should be apolitical.** There should be a panel involving the opposition, ruling party, civil society and the judiciary in the selection process of Governor. Governor should be appointed only after consultation with the CM of the state where he/she will work
- Discretionary powers should be curtailed. There should be proper guidelines on the appointment of CM.
- According to ex-PM Manmohan Singh, Governor’s office should facilitate in maintaining internal security, ensure communal harmony and welfare of SCs and STs and rise above partisan politics while discharging Constitutional obligations.

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## TH- In the political thicket

Election of Speaker of the Maharashtra Assembly revealed Governor’s partisan role

- The office of the Speaker in the Maharashtra Assembly was vacant for nearly 17 months, but it was filled up by an election held within two days of a new regime taking over.
- Rahul Narvekar of the BJP won with 164 votes in his favour and only 107 against, a margin that reflects the extent of support that Chief Minister Eknath Shinde enjoys in the House now. What facilitated Mr. Narvekar’s election was the change of heart on the **part of Governor Bhagat Singh Koshyari, who has been refusing to fix a date for the election.**
- In a partisan manner that has become typical for Governors, Mr. Koshyari has been citing the pendency of litigation, **related to amendments to the Assembly Rules on the mode of electing a Speaker, to avoid fixing a date as required by Rule 6.**
- Even though the Supreme Court is yet to dispose of an appeal in this matter, the Governor seems to have quietly withdrawn his objection and fixed the date for the Speaker’s election.
- Significantly, **the election took place by open ballot as envisaged by the changed rules.** The BJP, while in the opposition, was rooting for a secret ballot in the Speaker’s election, apparently in the expectation, even much before the Shinde camp’s revolt, that some members of the **Maha Vikas Aghadi (MVA)** constituents will vote against the ruling alliance. On the other hand, former Chief Minister Uddhav Thackeray favoured an open ballot as a possible deterrent against crossvoting.
- It is worth noting that the Constitution envisages no role for the Governor in the Speaker’s election, which is the prerogative of the House. It is only as a courtesy to the fact that the Governor is part of the legislature that the Assembly Rules say that the Governor shall fix the date for the Speaker’s election.
- It obviously means that the **Governor shall do so on the advice of the Council of Ministers**, but incumbents in Raj Bhavan entertain a perverse notion these days that they exercise power at their whim.

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- If any **Governor** believed that he had any say in the matter of fixing a date for the Speaker’s election, it is both contrary to the constitutional scheme and a sign of playing a politically partisan role.
- One part of the problem was that the amended rule said the Governor shall fix a date “**on the recommendation of the Chief Minister**”, raising a doubt whether it was an individual piece of advice.
- The **Bombay High Court**, however, noted that there is nothing to suggest that the CM’s opinion did not have the support of his Cabinet or that any constitutional provision has been violated.
- As the erstwhile dissidents from the Shiv Sena have emerged the present-day rulers and demonstrated their majority in the Assembly, these controversies may mean little now. However, it again shows that constitutional functionaries never rise above the political thicket.

All the best  
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Class explanation- mind map

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