UNIT 6: GOVERNOR

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6.1. LEARNING OBJECTIVES

After going through this unit, you will be able to:

- describe the qualifications, tenure, powers and functions of the Governor
- explain the Constitutional position of the Governor.

6.2. INTRODUCTION

The office of the Governor has been in existence since the beginning of the British regime in India. But, then the Governor was an autocrat, a despot and a dictator having enormous discretionary powers in every sphere of administration. On the other hand, under the Constitution of India, the machinery of the State Government is the same as that of the Central Government. Like the Union or Central Government, the State Governments are also formed on the parliamentary pattern. So, the chief executive of a

State is the Governor who resembles the President of the Union Government. Like the President, the Governor is also a Constitutional ruler, a nominal de-jure head of the State; not real executive. The real executive powers are exercised by the Council of Ministers headed by the Chief Minister.

6.3. GOVERNOR

6.3.1. Appointment:

Article 153 of the Constitution of India provides for the appointment of a Governor for each State. Of course, a common Governor may also be appointed for two or more States including some Union Territory or Territories.

Article 155 lays down that, the President of India appoints the Governor by warrant under his/her hand and seal as per the advice of the Union Cabinet. The President has no choice in this regard.

As a convention, the Chief Minister of the State Government is consulted by the Central Government while appointing the Governor. Again, a permanent inhabitant of a State is not appointed as its Governor.

6.3.2. Qualifications

Article 157 and 158 of the Constitution state that a person can be appointed as Governor, if he or she has the following qualifications:

(i) He/she must be a citizen of India.

(ii) He/she must have completed 35 years of age.

(iii) He/she must not be a member of either House of Parliament or of any State Legislature. In case he/she is member of a legislative body in India, he/she will have to resign before taking over the charge of his/her office.

(iv) He/she cannot hold any office of profit either under the Central Government or under any State Government.

6.3.3. Oath of Office

The Governor, before taking charge, takes an oath or affirmation in the presence of the Chief Justice of the High Court exercising jurisdiction in the State or in his/her absence, before the senior most judge available. He/she has to swear that he/she will preserve, protect and defend the Constitution and execute the office of the Governor for the well-being of the people of the State.

6.3.4. Tenure or Term of Office

The Governor is appointed by the President for a period of five years. Under article 156 of the Constitution, he/she holds office during the pleasure of the president. Governor may be dismissed or removed by the President before the expiry of five years term. He/she may also be transferred to another State at any time. Even after the expiry of five years term, a Governor can continue in office until his/her successor takes over. Moreover, the Governor may, by writing under his/her hand addressed to the President, resign from office at any time. The State Government does not have any power or authority in the removal of the Governor.

6.3.5. Emoluments

The monthly salary and other allowances of Governors are determined by the Parliament from time to time. At present, as per the Union Budget (2018-19), the Salary of Governor has been increased to Rs. 3.5 lacs per month besides other allowances befitting his/her position and status. He/she is also provided a rent free official residence. The salary and allowances of the Governor cannot be reduced during his/her term of office.

6.3.6. Legal Privileges

By article 361 of the Constitution, the Governor is protected against legal proceeding in the law court. 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 or for any act done or

purporting to be done by him/her in the exercise and performance of those powers and duties. No criminal or civil cases can be filed against the Governor in any court during his/her term of office. The Courts are prohibited from issuing any warrant for the arrest of Governor during his/her term of office. The Governor is also not responsible to the State Legislature for his/her functions.

6.3.7. Powers and Functions of the Governor

The Governor has no diplomatic, emergency or military powers like the President, but as the head of the State, he/she exercises wide range of powers and functions which can be discussed under the following five heads:

(i) Executive Powers & Functions (ii) Legislative Powers & Functions (iii) Financial Powers & Functions (iv) Judicial Powers & Functions (v) Discretionary Powers & Functions.

- **Executive Powers and Functions**

Under Article 154, the executive powers of the State is vested upon the Governor who may discharge these powers either directly or through officers subordinate to him/her. All executive actions of the State Government are taken in his/her name. The Governor also makes the necessary rules for the transaction of the business of the government and for the allocation of work among the ministers.

The Governor appoints the Chief Minister and other Ministers on the advice of the Chief Minister. He/she distributes portfolios among them as advised by the Chief Minister. The Governor administers them oath of office and secrecy and accepts their resignation. The Council of Ministers remain in office during the pleasure of the Governor. He/she may also dismiss them.

The Governor also makes appointments of important officials of the State like the Advocate-General, the Chairman and the member of the State Public Service Commission, Vice Chancellors for all the State Universities, Judicial Appointments below those of the Judges of High Court, and many other high officials relating to the State administration.

According to Article 167, The Chief Minister should apprise the Governor of the decision of the Council of Ministers relating to the administration of the State. He/she may call for any information from the Chief Minister in this connection. He/she may also ask the Chief Minister to submit the decision of an individual minister for the consideration of the Council of Ministers.

The Governor is the Ex-Office Chancellor of the State Universities and therefore, he/she is responsible for looking to their proper management.

Article 356 of the Constitution empowers the Governor to recommend to the President for imposition of State Emergency in case of the breakdown of the Constitutional machinery. If the President imposes State Emergency or President's Rule, the Governor takes the full responsibilities of the administration of the State as an agent of the Central Government.

- **Legislative Powers and Functions**

Though the Governor is not a member of the State Legislature, but he/she is an integral part of it. The Governor can summon and prorogue the session of the State Legislature, he/she can dissolve the Lower House of the State Legislature i.e. the State Legislative Assembly at any time.

The Governor can nominate one member from the Anglo-Indian Community to the State Legislative Assembly, if there are people of that community in the State and they are not adequately represented. He/she also nominates about one-sixth (1/6) members to the State Legislative Council from among the persons having special knowledge or experience in the field of Science, Literature, Art, Social Service and Co-operative movements.

Every Bill passed by the State Legislature become an Act only after the Governor gives his/her assent or signature on it. The Governor does not enjoy the power to veto on Bill passed by the State Legislature, but he/she may withhold his/her assent to a Bill (other than money bill) and return the same to the Legislature for

reconsideration. But, if the bill is again passed by the Legislature in the same form, it becomes obligatory for the Governor to give his/her assent. The Governor can also send certain Bills passed by the State Legislature for the consideration of the President, if a bill is derogatory to the powers of the High Court or if it involves acquiring of property for public purposes.

When the State Legislature is not is session, the Governor is vested with the power to issue an Ordinance to meet any emergency situation. Such an Ordinance shall have the force of law and continue to remain in operation till six weeks after the re-assembling of the State Legislature. In case of certain Ordinances, he/she requires to obtain approval of the President.

The Governor has been authorised by the Constitution to deliver an address to either House or both Houses assembled together and if he/she desires, he/she can send message to them for consideration. The First session of the State Legislature after general election and its first session of each year vis -a-vis the budget session begins with the address of the Governor, which embodies the policies of the Government for the ensuing year.

The Governor has the power to decide on a matter relating to the disqualification of a member of the State Legislature in consultation with the Election Commission. He/she also has the responsibility to observe that the annual reports of various Govt. agencies submitted to him/her are placed before the State Legislature for consideration.

- **Financial Powers and Functions**

It is the duty of the Governor to see that State Budget is placed before the State Legislative Assembly every year in time and passed.

No demand for supplementary, additional and excess grants from the Legislature can be made without the prior consent of the Governor.

The Contingency Fund of the State is at the disposal of the Governor and he/she can make advances out of it to meet the unforeseen expenditure before the Legislature makes arrangement for them.

No Money Bill can be introduced in the Legislative Assembly of the State without his/her recommendation. He/she must always give his/her assent to a Money Bill passed by the Legislature. He/she cannot withhold or return a Money Bill.

➢ **Judicial Powers and Functions**

The Governor enjoys certain judicial powers. He/she is consulted by the President in matter relating to the appointment of the judges for the High Court of his/her State. The judges of the High Court take oath of their office before him/her.

The Governor determines the appointment, posting and promotion of the District Judges and other Judicial officers in consultation with the High Court and Public Service Commission.

Article 161 has empowered the Governor to grant pardon to the persons convicted by the Courts of Law by remitting or commuting their sentences provided the offence comes under the law relating to matters that are within the executive competence of the State Government. However, unlike the President, the Governor cannot grant pardon against a death sentence; he/she can only suspend the execution of a death sentence.



Let us know

We must keep in our mind that, the Governor exercises all the powers and functions (as mentioned above) as per the advice of the Council of Ministers headed by the Chief Minister, under Article 163 of the Indian Constitution. The framers of the Constitution intended the Governor to be a nominal head.

➢ **Discretionary Powers and Functions**

In general, the Governor should act in accordance with the advice of the Council of Ministers, but the Constitution under Article 163 (I) has empowered him/her to act in his/her discretion in certain matters for which he/she is not required to act on the advice of his/her Council of Ministers. The following are the occasions on which the Governor can exercise his/her discretion:

(a) In case of no party holding a clear majority in the Legislative Assembly, the Governor shall exercise his/her discretion in the selection and appointment of the Chief Minister.

(b) He/she has the power to send report to the President that there is a breakdown of the Constitutional machinery of the State and State Emergency or President's Rule may be declared in respect of his/her State.

(c) During the State Emergency or President's Rule, the Governor acts in his/her discretion while acting as the agent of the President.

(d) The Governor can use his/her discretion in dismissing a ministry when the party in power loses majority or is likely to lose majority in the State Legislative Assembly due to revolt or a split in the party.

(e) The Governor may exercise his/her discretion is summoning and dissolving the Legislative Assembly.

(f) The Governor also has discretionary power in reserving a Bill, passed by the State Legislature, for President's consideration, if it is in conflict with a law or policy of the Union Government.

(g) He/she can exercise his/her discretion in certain matter in the event of conflict between the Union and the State Government.

(h) In case the President appoints a Governor as administrator of an adjoining Union Territory, he/she shall exercise his/her functions, related to that Union Territory, independently.

➢ **Special Powers**

Besides the powers and functions described above, the Governors of some States like Assam, Arunachal Pradesh, Nagaland, Sikkim, Manipur, Gujarat, Orisha, Maharashtra and Madhya Pradesh have been given some special powers or responsibilities.



CHECK YOUR PROGRESS

Q.1: Fill in the blanks:

a) The Governor is appointed by the _____.

.....

b) The Legislative Assembly can be dissolved by the _____.

.....

Q.2: Write True or False

a) The Governor can be removed by the State cabinet.

.....

b) The Governor enjoys discretionary powers.

.....

c) The Governor is a member of the State Legislature.

.....

6.3.8. Constitutional Position of the Governor

The powers and functions of the Governor as discussed above, reveals that he/she enjoys immense powers in all spheres of administration. But, it is wrong to suppose that the Constitution has made him/her a virtual dictator. The Constitution clearly prescribes that the Governor is to be aided and assisted in the discharge of his/her function by a Council of Ministers headed by the Chief Minister, which will have collective responsibility towards the Legislative Assembly.

Dr. Ambedkar, made a remark on the position of the Governor's office and powers that his/her powers will be so limited, so nominal and his/her position so ornamental that it would be a waste to spend public money on his/her election.

Normally, the Governor is bound by the advice of the Council of Ministers but that does not mean that he/she has nothing to do except sign on the dotted line. He/she can guide the Council of Ministers under different circumstances. Sometimes he/she has to take important decision by himself/herself. Besides, he/she has considerable discretionary powers in terms of which he/she can work without consultation with the Council of Ministers. The position of the Governor therefore, cannot be considered as merely ornamental.

The position of the Governor as in the case of any of the public offices depends much on the holder of the post. A Governor with a weak personality may reduce himself/herself to the position of a non-entity rubber stamp to be used by the Ministers when required. But, if the Governor is a man of strong personality, he/she can easily influence and guide his/her Council of Ministers as well as the administration in the right path. He/she may persuade his/her government to take proper steps towards the welfare activities and betterment of the people as well as social, economic and educational development of the State. The Governor may play an important role in bringing about unity among the people of the State. Being a link between the Central and State Government, he/she can contribute a lot towards the improvement of Centre-State relations by pointing out the difficulties and grievances of the State before the Central Government.

But, it is very unfortunate that, the office of the Governor has become very controversial recently. Because the ruling party at the Centre always expect him/her to take care of its interest (Political Interest). Moreover, the appointment and removal of Governor on political consideration always adversely affects the working and prestige of the office of the Governor. It has been noticed that the Governors sometimes don't perform their duties impartially. The political neutrality and impartiality of the Governor will help him/her

to serve properly the interest of the people of the State, which will improve his/her position.



CHECK YOUR PROGRESS

Q.3: Write a short note on the term of the office of the Governor (within 50 words)

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Q.4: Write two qualifications to be the Governor of a State

.....

Q.5: When the Governor can issue an Ordinance?

.....

Q.6: Who is the custodian of the Contingency Fund of the State?

.....

Q.7: Can the Governor declare emergency?

.....



6.4. LET US SUM UP

- Article 153 of the Constitution of India provides for the appointment of a Governor for each State.
- The Governor is appointed by the President for a period of five years.
- As the Constitutional head of the States, the Governor exercises wide range of powers. The entire administration of the State runs in the name of the Governor.
- Every Bill passed by the State Legislature become an Act only after the Governor gives his/her assert or signature on it.
- The Governor is vested with the power to issue an Ordinance to meet any emergency situation.
- Like the President, the Governor is also the titular or nominal head of the State. In reality, all the powers of the Governor are exercised by the council of Ministers headed by the Chief Minister.
- The Governor enjoys certain discretionary powers for which he/

she is not required to act on the advice of the Council of Ministers.

- The Governor is to be aided and assisted in the discharge of his/her function by a Council of Ministers headed by the Chief Minister, which will have collective responsibility towards the Legislative Assembly.
- Actually the position of the Governor depends upon the personality and ability of the person who occupies it.



6.5 FURTHER READING

1) Chander, Prakash. (2000). *Indian Government and Politics.* New Delhi: Cosmos Bookhive Pvt. Ltd.
2) Ghai, K.K. (2008). *Indian Government and Politics.* New Delhi: Kalyani Publishers.
3) Kapur, Anup Chand and Misra, K.K. (2006). *Select Constitutions.* New Delhi: S. Chand and Company.
4) Pylee, M.V. (2006). *Constitutional Government in India.* New Delhi: S. Chand and Company.

6.6. ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: a) President

b) Governor

Ans to Q No 2: a) No

b) Yes

c) No

Ans to Q No 3: A Governor is appointed by the president for a period of 5 years but his/her term depends on the pleasure of the President. He/she can dismiss him/her, transfer him/her to another State or even extend his/her term. The Governor can also resign from office at any time.

Ans to Q No 4: (i) He/she must be a citizen of India

(ii) He/she must have completed 35 years of age.

Ans to Q No 5: When the State Legislative is not in session.

Ans to Q No 6: The Governor

Ans to Q No 7: No



6.7. MODEL QUESTIONS

A. Very Short Questions

Q. 1. Who is the Constitutional head of a State?

Q. 2. What are the qualifications of a Governor?

Q. 3. The Governor can dissolve the State Legislative Council? (True/False)

Q. 4. The Governor must sign a Money Bill? (True/False)

B. Short Questions (Answer each in about 150-200 words)

Q. 1: What do you understand by the 'Discretionary Powers' of the Governor of a State?

Q. 2: Write a note on the legal privileges of the Governor of a State.

C. Long Questions (Answer each in about 300-500 words)

Q. 1. How is the Governor of a State appointed? Discuss his powers and functions.

Q. 2. Explain the Constitutional position and role of the Governor in State administration.

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