

THE OFFICE OF THE GOVERNOR IN INDIA: HISTORICAL EVOLUTION AND EXECUTIVE POWERS OF STATE GOVERNORS UNDER THE INDIAN CONSTITUTION

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Chapter 1: Introduction & Methodology

1.1 Introduction and Theoretical Background

The constitutional architecture of India establishes a quasi-federal structure with a strong centralizing bias, a design choice profoundly influenced by the turbulent socio-political climate surrounding the nation's partition. Within this framework, the office of the Governor emerges as one of the most complex, debated, and legally contested institutions. Positioned at the intersection of federalism and parliamentary democracy, the Governor is designed to fulfill a dual capacity: serving as the ceremonial, constitutional head of the State executive, while simultaneously acting as a crucial bridge of communication and oversight for the Union Government.

The formal repository of state executive authority is rooted in **Article 154(1)** of the Constitution, which mandates that the executive power of the State shall be vested in the Governor and exercised either directly or through subordinate officers. However, this repository of power must be read harmoniously with **Article 163(1)**, which establishes a parliamentary system at the state level. Article 163(1) explicitly dictates that there shall be a Council of Ministers, with the Chief Minister at the head, to "aid and advise" the Governor in the exercise of their functions.

The core constitutional friction arises from the textual caveat within Article 163(1)—"*except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.*" This linguistic formulation departs significantly from the constitutional phrasing used for the President of India under Article 74(1), granting the Governor a constitutional window for discretionary action that the President textually lacks. Consequently, the office frequently shifts from a passive, titular entity into an active political actor, sparking intense legal battles over the limits of gubernatorial autonomy, federal autonomy, and democratic mandates.

1.2 Statement of the Problem

While the framers of the Constitution envisioned the Governor as a sagacious, non-partisan arbiter—a *paterfamilias* of the state—the operational reality in post-independence India has frequently deviated from this ideal. The friction between elected state governments and appointed Governors usually manifests in three critical arenas:

1. **The Appointment and Dismissal of Chief Ministers:** Particularly in the wake of fractured electoral mandates or hung assemblies, where the exercise of "discretion" can border on arbitrary political preference.
2. **The Assent to Bills (Article 200):** Where the indefinite withholding of assent ("pocket veto") or the strategic reservation of state bills for the consideration of the President is perceived as an overreach into the legislative domain of elected state assemblies.
3. **The Recommendation of President's Rule (Article 356):** Historically the most controversial power, where the Governor's assessment of a "breakdown of constitutional machinery" has occasionally been weaponized to destabilize opposition-led state governments.

This study seeks to analyze whether the current constitutional safeguards and judicial doctrines are sufficient to maintain the delicate balance between the Governor's constitutional duties and the principles of cooperative federalism.

1.3 Research Objectives

The primary objectives of this legal inquiry are:

- To trace the evolution of the Governor's office from its colonial origins under the Government of India Act, 1935, to its contemporary constitutional iteration.
- To critically analyze the constitutional boundary between the "aid and advice" mandate and the explicitly or implicitly granted discretionary powers of the Governor.
- To evaluate the evolution of judicial review from *S.R. Bommai* to *Nabam Rebia* regarding gubernatorial overreach.
- To assess the feasibility of implementing the reforms proposed by major center-state commissions to prevent the politicization of the office.

1.4 Research Questions

1. What are the precise constitutional boundaries of the Governor's discretionary powers under Article 163, and how has the judiciary interpreted these limits to preserve cabinet responsibility?
2. To what extent does the Governor's power to withhold assent to or reserve legislative bills under Article 200 conflict with the democratic mandate of state legislatures?
3. How can the appointment mechanism and tenure security of Governors be reformed to ensure non-partisan functioning without compromising the Union's legitimate constitutional oversight?

1.5 Methodology

This study adopts a rigorous **doctrinal and analytical research methodology**, focusing on the systematic interpretation of legal texts, historical statutory developments, and evolving judicial philosophies. Given the nature of constitutional law, a qualitative approach is utilized to evaluate how formal legal rules translate into political and institutional practice.

The research relies upon a two-tiered source structure:

1.5.1 Primary Sources

- **Constitutional Text:** Direct textual analysis of the Constitution of India, 1950, specifically focusing on Articles 153 to 164, 200, 201, and 356.
- **Constituent Assembly Debates (CAD):** Insights from the historic debates (specifically volumes VIII and IX) to capture the *original intent* of the framers regarding the non-partisan nature of the office.
- **Judicial Precedents:** Critical case analysis of landmark Supreme Court rulings, including:
 - *Samsher Singh v. State of Punjab (1974)* (establishing the primacy of cabinet advice).
 - *S.R. Bommai v. Union of India (1994)* (subjecting Article 356 to strict judicial review).
 - *Rameshwar Prasad v. Union of India (2006)* (prohibiting arbitrary dissolution of assemblies).
 - *Nabam Rebia v. Deputy Speaker (2016)* (limiting discretionary powers regarding assembly sessions).

1.5.2 Secondary Sources

- **Commission Reports:** Comprehensive review of systemic reform proposals contained within the *Sarkaria Commission Report on Centre-State Relations (1988)*, the *National Commission to Review the Working of the Constitution (NCRWC, 2002)*, and the *Punchhi Commission Report (2010)*.
- **Academic Literature:** Peer-reviewed legal treatises (e.g., H.M. Seervai, D.D. Basu, and Granville Austin), legal journals (such as the *Journal of the Indian Law Institute*), and contemporary constitutional commentaries evaluating federal frictions.

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Historical Evolution of the Governor's Office

2.1 The Colonial Foundations: Instruments of Imperial Centralization (1773–1858)

The contemporary office of the Governor in the Republic of India cannot be understood merely as a post-colonial creation. Rather, it represents an institutional evolution of a bureaucratic apparatus originally engineered by the British Crown to enforce imperial hegemony, maintain centralized control, and facilitate economic extraction.

The Regulating Act of 1773 and Pitt's India Act of 1784

Before 1773, the Presidencies of Bengal, Bombay, and Madras operated as largely independent, commercial fiefdoms of the East India Company, each presided over by a Governor who answered directly to the Court of Directors in London. The **Regulating Act of 1773** marked the British Parliament's initial intervention into Company affairs, introducing a formal administrative hierarchy. The Act elevated the Governor of Bengal to the status of **Governor-General of Fort William**, explicitly subordinating the Governors of Bombay and Madras to Bengal's oversight in matters of diplomacy, war, and revenue.

This centralization was structurally solidified by **Pitt's India Act of 1784**. This statute established the *Board of Commissioners for the Affairs of India* (the Board of Control) in London, effectively splitting control between the Company and the Crown. The Act diminished the operational autonomy of provincial Governors, transforming them into bureaucratic conduits who executed policies formulated at the center.

The Charter Acts and the Total Stripping of Legislative Power

The **Charter Acts of 1813 and 1833** completed the centralization process. The Charter Act of 1833 formally stripped the Governors of Bombay and Madras of their independent law-making authority, vesting all legislative power exclusively in the Governor-General-in-Council. Provincial Governors were reduced to purely executive officers tasked with implementing central decrees.

The Government of India Act 1858: Direct Imperial Agency

The geopolitical landscape altered fundamentally following the Uprising of 1857. The British Parliament enacted the **Government of India Act 1858**, which dissolved the East India Company and transferred the governance of India directly to the British Crown.

Under this new constitutional architecture, provincial Governors ceased to be corporate administrators. Instead, they were legally designated as direct delegates of the British Monarch. Operating under the strict vertical command of the Viceroy and the Secretary of State for India, these Governors wielded near-absolute executive power within their territories, entirely insulated from local public accountability or representative scrutiny.

2.2 Constitutional Experiments and the Illusion of Autonomy (1919–1935)

By the early 20th century, escalating pressure from the Indian National Movement forced the British Raj to introduce incremental constitutional reforms. These reforms sought to inject popular representation into provincial governance without compromising imperial control over vital state functions. The office of the Governor served as the primary mechanism to maintain this balance.

The Government of India Act 1919 and the Mechanics of Dyarchy

The **Government of India Act 1919** (codifying the Montagu-Chelmsford Reforms) introduced **Dyarchy**—a system of dual government—within the provinces. This framework bifurcated the provincial administration into two distinct operational domains:

Subject Category	Portfolios Included	Administrative Mechanism
Reserved Subjects	Finance, Police, Justice, Prisons, Land Revenue	Administered exclusively by the Governor and his bureaucratic Executive Council, completely insulated from legislative oversight.
Transferred Subjects	Education, Local Self-Government, Public Health, Agriculture	Administered by the Governor acting on the advice of Indian Ministers elected from the provincial Legislative Councils.

Export to Sheets

Crucially, the 1919 Act granted the Governor expansive **overriding powers**. Section 72D of the Act empowered the Governor to certify expenditure and pass legislation over the explicit rejection of the provincial legislature under the guise of safety, tranquility, or the proper discharge of his duties. If a Governor disagreed with his elected Indian ministers on a transferred subject, he held the absolute legal right to dismiss their advice and act independently. This architecture introduced the concept of **gubernatorial discretion overriding democratic mandates** into the Indian legal tradition.

The Government of India Act 1935: The True Blueprint

The **Government of India Act 1935** represents the most critical historical milestone in this evolution. It served as the structural and textual baseline from which the framers drafted the 1950 Indian Constitution.

The 1935 Act ostensibly abolished Dyarchy and inaugurated **Provincial Autonomy**, removing the formal distinction between reserved and transferred subjects. On paper, the entire provincial executive was placed under a Council of Ministers responsible to a fully elected provincial legislature. However, this autonomy was heavily circumscribed by extensive "safeguards" and "special responsibilities" vested directly in the Governor under **Sections 50 and 52** of the Act.

The 1935 Act divided the Governor's official functions into three distinct legal capacities:

1. **Acting in his Discretion:** Matters where the Governor was legally empowered to act entirely on his own judgment, without any statutory requirement to consult his ministers (e.g., summoning the legislature, appointing ministers, or controlling political intelligence branches).
2. **Acting in his Individual Judgment:** Matters where the Governor was legally required to *consult* his Council of Ministers, but reserved the absolute right to reject their advice if it conflicted with his "special responsibilities" (such as safeguarding minority rights, maintaining public peace, or protecting the rights of the Civil Services).
3. **Acting on Aid and Advice:** Standard administrative matters where the Governor followed the policy decisions of the elected ministry.

To ensure central control, **Section 93** of the 1935 Act provided that if the Governor was satisfied that a situation had arisen where the government of the province could not be carried on in accordance with the provisions of the Act, he could, with the concurrence of the Governor-General, assume absolute control of both the legislative and executive machinery of the province. This provision served as the direct, literal draft for **Article 356** of the modern Constitution.

2.3 The Constituent Assembly Debates: The Intellectual Conflict (1947–1949)

When the Constituent Assembly gathered to draft the framework for an independent India, the historical legacy of the Governor's office provoked some of the most contentious debates in the assembly's history. The core dilemma was clear: *How could an office originally designed for imperial oversight fit within a democratic commonwealth based on popular sovereignty and federal principles?*

The Shift from Direct Election to Central Appointment

The initial design for the post-independence Governor was radically different from what was ultimately adopted. In the July 1947 report submitted by the *Provincial Constitution Committee*, chaired by **Sardar Vallabhbhai Patel**, it was recommended that the Governor be **directly elected** by the citizens of each state through universal adult franchise. The early constitutional drafts assumed that an elected Governor, possessing a direct democratic mandate, could legitimately exercise discretionary powers to maintain federal equilibrium.

However, by May 1949, the Assembly completely reversed its position. Led by **Dr. B.R. Ambedkar** and **Jawaharlal Nehru**, the drafting committee realized that a directly elected Governor would create a dangerous dual-power dynamic within the state executive.

- **The Argument against Inter-Institutional Conflict:** Nehru and Ambedkar argued that a directly elected Governor would inevitably clash with the elected Chief Minister for political primacy. Both would claim a direct mandate from the people, leading to institutional gridlock.
- **The Unitary Threat to Secession:** In the wake of Partition, the framers prioritized national unity. They determined that an appointed Governor, acting as an agent of the Central Government, was necessary to counter fissiparous, secessionist tendencies in the provinces.

Consequently, the Assembly abandoned the elective model and adopted the Canadian framework, where the Governor is appointed directly by the President of India (acting on the advice of the Union Cabinet).

The Reassurances of Dr. B.R. Ambedkar

This shift to a centrally appointed Governor sparked intense resistance from members like **H.V. Kamath, Rohini Kumar Chaudhuri, and Prof. K.T. Shah**, who argued that the office would simply revive colonial autocracy and undermine provincial autonomy.

To allay these fears, **Dr. B.R. Ambedkar** delivered a seminal address to the Assembly, defining the intended limits of the office:

"The Governor under the Constitution has no functions which he can exercise by himself. This House must remember that standard constitutional position. According to the principles of the Constitution, he is required to follow the advice of his Ministry in all matters... The Governor's duties are not executive, but rather advisory and supervisory. He is the clean, non-partisan umpire who stands above the political fray."

Ambedkar emphasized that the Governor's role would be limited to what Bagehot termed the rights of a constitutional monarch: *"the right to be consulted, the right to encourage, and the right to warn."*

The Textual Loopholes and the Retained Colonial Anachronism

Despite these democratic assurances, a critical contradiction occurred. When the drafting committee finalized what is now **Article 163**, they chose to retain the phrasing from Section 50 of the Government of India Act 1935: *"except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion."*

Members of the Assembly pointed out that while the text governing the President of India (**Article 74**) bound the President tightly to cabinet advice, the text governing the Governor (**Article 163**) explicitly preserved an autonomous pocket of discretion. The framers chose to leave this language intact, operating on the assumption that healthy political conventions and non-partisan appointments would keep this discretionary power dormant.

By leaving this colonial-era loophole open, the framers bequeathed a structural tension to independent India, setting the stage for ongoing constitutional conflicts between elected state ministries and centrally appointed Governors.

The Constitutional Framework of the State Executive

3.1 The Structural Continuum: Articles 153 to 162

Part VI of the Constitution of India outlines the institutional design of the State Executive. Operating within a parliamentary framework, **Articles 153 through 162** create the institutional architecture, formal authority, and territorial jurisdiction of the Governor, establishing a clear division between formal authority (*de jure*) and political power (*de facto*).

Article 153: The Institutional Anchor and the 1956 Pivot

Article 153 serves as the structural anchor of the state executive apparatus, mandating that *"There shall be a Governor for each State."* This unyielding language initially created a strict one-to-one relationship between a state and its constitutional head. However, reorganization required greater administrative flexibility.

The **Seventh Constitutional Amendment Act of 1956** added a crucial proviso to Article 153: *"nothing in this article shall prevent the appointment of the same person as Governor for two or more States."* This amendment allowed the Union Government to address administrative exigencies, handle transitions in union territories, and manage contiguous border states under a single administrative head without violating the constitutional mandate.

Article 154: The Formal Repository of State Power

Article 154(1) establishes the Governor's formal legal authority, declaring that 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.

However, this vesting clause is textually bound by **Article 154(2)**, which protects democratic governance through two key restrictions:

- **Article 154(2)(a):** It explicitly prevents the transfer to the Governor of any functions conferred by any existing law on any other authority.
- **Article 154(2)(b):** It clarifies that nothing in the article prevents the Parliament of India or the State Legislature from conferring, by law, administrative functions upon authorities subordinate to the Governor.

This ensures that while the Governor remains the formal head of the executive branch, the actual execution of law can be insulated and assigned to autonomous statutory bodies by the legislature.

Articles 155 and 156: Appointment, Vulnerability, and the "Pleasure Doctrine"

The method of securing a Governor is defined by **Article 155**, which states that the Governor of a State shall be appointed by the President by warrant under his hand and seal. In practice, this means direct nomination by the Union Cabinet, highlighting the Governor's structural role as a central representative within the state.

This structural dependence is reinforced by **Article 156**, which governs the tenure of office:

- **Article 156(1):** The Governor holds office during the **pleasure of the President**.
- **Article 156(2):** The Governor may, by writing under his hand addressed to the President, resign his office.
- **Article 156(3):** Subject to the pleasure doctrine, the Governor holds office for a term of five years from the date on which he enters upon his office.

The interplay between the five-year term and the "pleasure of the President" has historically exposed the office to political vulnerability. Because the text does not outline specific grounds for removal, incoming central governments have frequently dismissed or transferred sitting Governors appointed by previous administrations.

This practice has been a major point of friction in center-state relations, leading the judiciary to step in to protect the stability of the office. In the landmark case *B.P. Singhal v. Union of India (2010)*, the Supreme Court ruled that while the President can remove a Governor without assigning reasons, this power cannot be exercised arbitrarily, whimsically, or for purely political motives.

3.2 The Operational Nexus: Articles 163 and 164

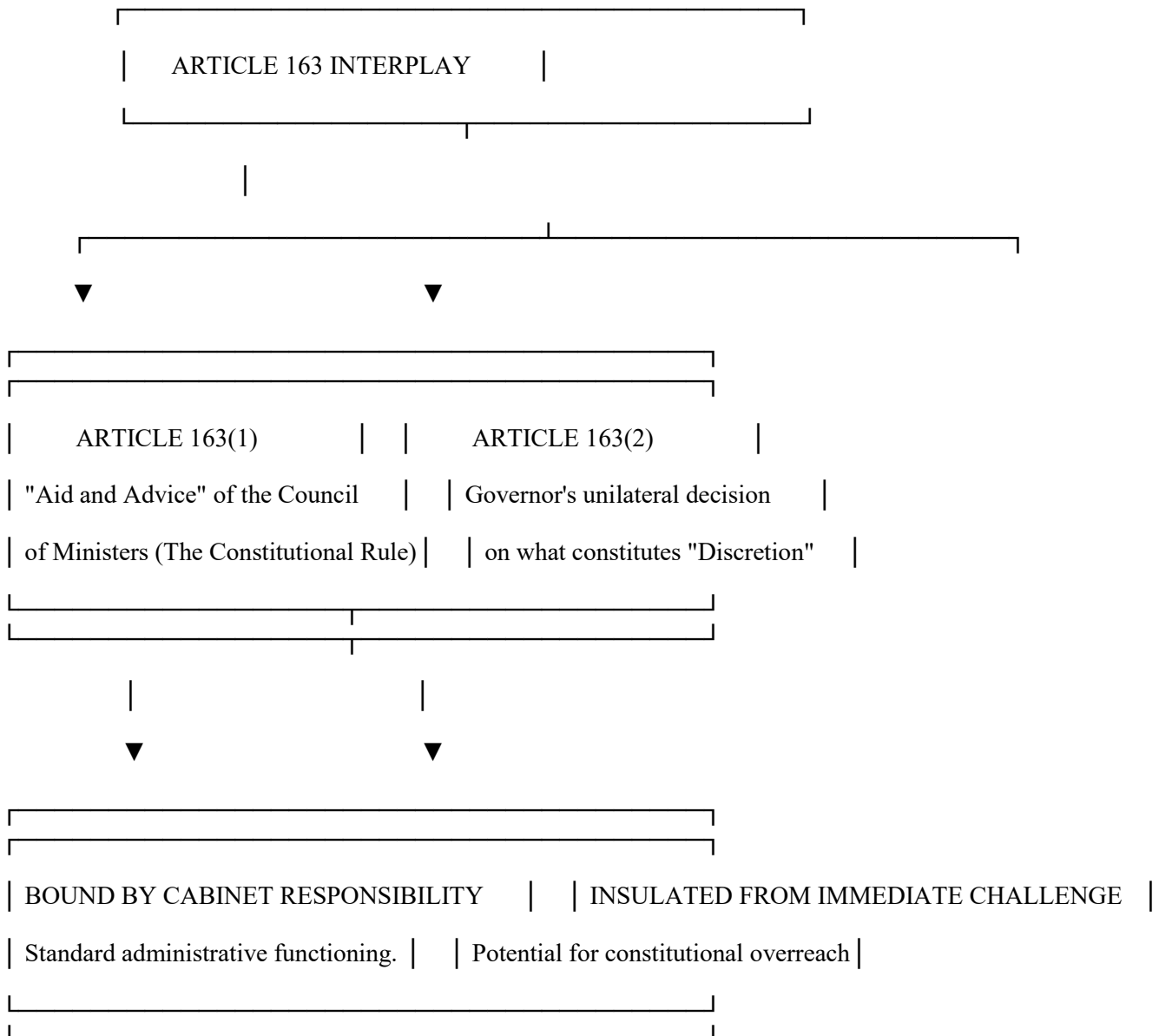
Articles 163 and 164 form the core of the parliamentary system at the state level. They define the structural relationship between the nominal executive and the elected cabinet.

Article 163: The Mandatory "Aid and Advice" and its Caveat

Article 163(1) establishes the fundamental rule of cabinet responsibility: there shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions. However, unlike the corresponding provision for the President (**Article 74(1)**), Article 163 contains a textual exception: *"except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion."*

This textual deviation grants the Governor a distinct area of constitutional autonomy. This autonomy is reinforced by **Article 163(2)**, which states that if any question arises whether a matter falls within the Governor's discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by him shall not be called in question on the ground that he ought or ought not to have acted in his discretion.

Furthermore, **Article 163(3)** insulates the relationship between the executive and the cabinet from judicial oversight by mandating that the question of whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any court.



Article 164: Appointment of Ministers and Cabinet Solidarity

Article 164 establishes the mechanics of democratic government formation:

- **Article 164(1):** The Chief Minister is appointed by the Governor, and the other Ministers are appointed by the Governor on the advice of the Chief Minister. It also reaffirms that Ministers hold office during the pleasure of the Governor.
- **Article 164(2):** The Council of Ministers is **collectively responsible** to the Legislative Assembly of the State.

This creates a critical constitutional balance. While the text states that ministers hold office during the "pleasure" of the Governor, this pleasure is bound by democratic reality. As long as the Council of Ministers commands a majority in the elected Legislative Assembly, the Governor cannot arbitrarily dismiss the ministry. The "pleasure" of the Governor begins and ends with the cabinet's ability to maintain the confidence of the house.

3.3 De Jure vs. De Facto Executive: The Definitive Legal Reality

The constitutional framework explicitly designs the Governor as a *de jure* (nominal or titular) head, rather than a *de facto* (real) executive. The Governor represents the continuity of the state structure, while the Chief Minister and the Cabinet wield actual administrative power derived from the democratic mandate.

This division of power has been consistently clarified by the Supreme Court of India through key rulings that align gubernatorial power with Westminster conventions:

- ***Samsher Singh v. State of Punjab (1974)*:** A seven-judge bench of the Supreme Court firmly established that the Governor is the constitutional head of the State, who must exercise their formal executive powers in harmony with the aid and advice of the Council of Ministers. The Court noted very limited exceptions where the Governor can act independently, such as when choosing a Chief Minister after a hung election or when deciding on the dismissal of a government that has lost its majority but refuses to resign.
- ***Nabam Rebia v. Deputy Speaker (2016)*:** The Supreme Court reinforced this position by ruling that the Governor's discretionary powers under Article 163 are strictly limited to areas explicitly granted by the constitutional text. The Court made it clear that Article 163 does not give the Governor general discretionary license to act as a parallel political authority to the elected government, particularly in matters concerning the summoning or proroguing of the legislative assembly.

Constitutional Powers and Functions of the Governor

4.1 Executive Powers: The Formal Matrix of Administration

As the formal head of the state executive under **Article 154**, all administrative and executive actions of the state government are explicitly taken in the name of the Governor. The Governor's executive reach covers critical areas of institutional appointment, bureaucratic oversight, and constitutional governance.

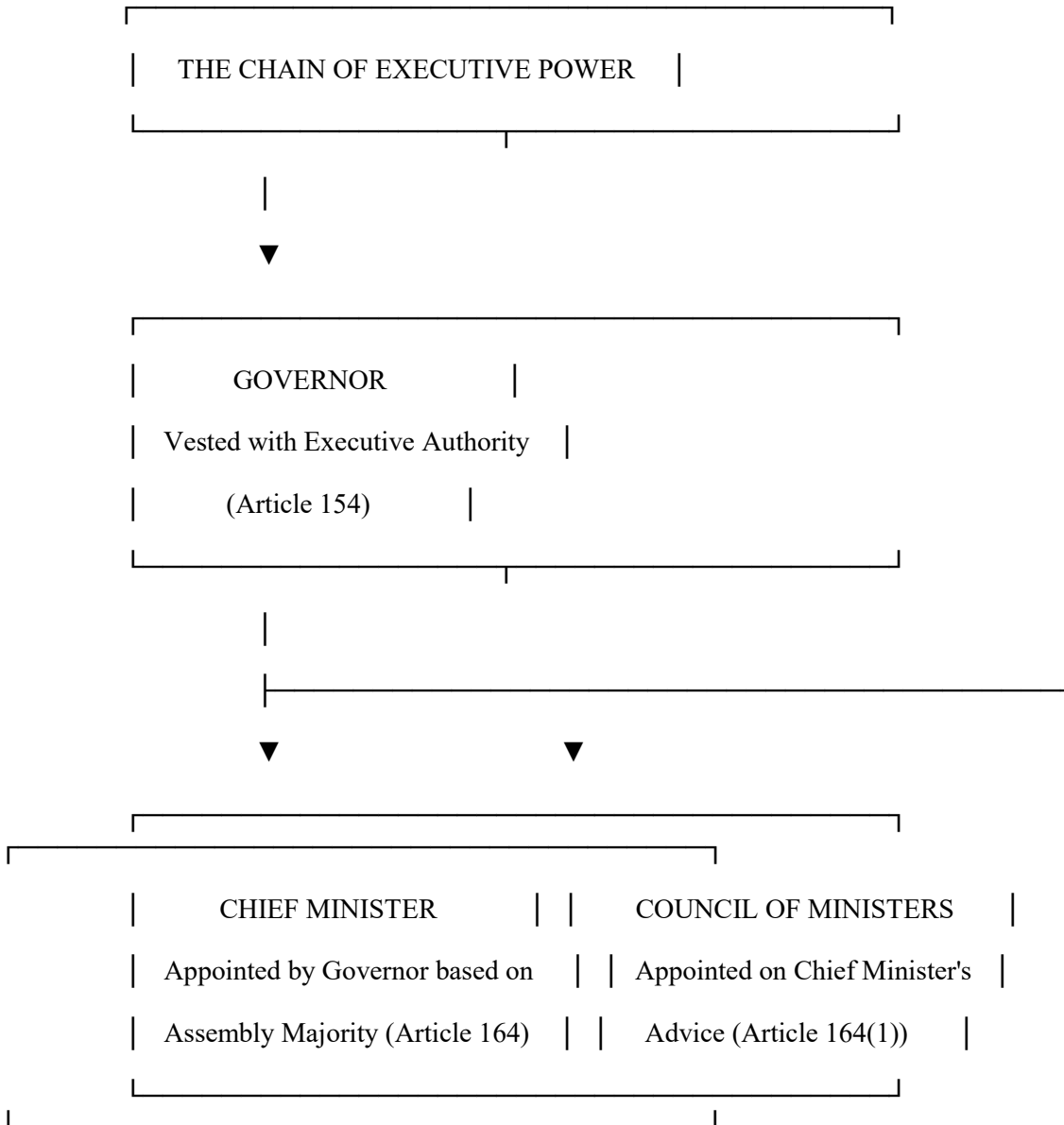
4.1.1 The Power of Executive Execution and Conduct of Business

Under **Article 166(1)**, all executive action of the Government of a State must be expressed to be taken in the name of the Governor. **Article 166(3)** further empowers the Governor to make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business. This gives the Governor the formal authority to sign off on the *Rules of Business*, which dictate how files move through departments and how ministerial portfolios are allocated.

4.1.2 Appointment of the Chief Minister and the Cabinet

According to **Article 164(1)**, the Chief Minister is appointed directly by the Governor. On the advice of that Chief Minister, the Governor appoints the remaining members of the Council of Ministers. While this is normally a procedural

formality when a single political party wins a clear majority, it becomes a crucial, active power during a hung assembly, where the Governor must evaluate who is best suited to form a stable government.



4.1.3 The "Pleasure Doctrine" and the Right to Information

Article 164(1) also states that Ministers hold office during the **pleasure of the Governor**. While this pleasure cannot be exercised arbitrarily against a ministry that enjoys a legislative majority, it serves as a key constitutional tool if a government loses its footing.

To ensure the Governor can oversee these dynamics, **Article 167** outlines the Chief Minister's duties to supply information. It mandates that the Chief Minister must communicate all decisions of the Council of Ministers to the Governor and furnish any information regarding the administration of the state or legislative proposals that the Governor calls for.

4.1.4 Strategic Institutional Appointments

The Governor serves as the ultimate authority for key administrative appointments across the state's legal, regulatory, and educational frameworks:

- **The Advocate General (Article 165):** The Governor appoints the Advocate General for the state, who must be qualified to be appointed a Judge of a High Court. The Advocate General serves as the chief legal advisor to the state government and holds office during the explicit pleasure of the Governor.

- **The State Election Commissioner (Article 243K):** The Governor appoints the State Election Commissioner, who oversees local body elections (Panchayats and Municipalities). To safeguard their independence, the constitutional text notes that the Commissioner can only be removed from office in the same manner and on the same grounds as a Judge of a High Court.
- **State Public Service Commission (Article 316):** The Governor appoints the Chairman and members of the State Public Service Commission (SPSC). However, the Constitution builds in a clear check and balance: while the Governor has the power of *appointment*, the power of *removal* is reserved for the President of India under Article 317 to insulate the commission from local political pressures.
- **University Chancellorships:** By virtue of statutory provisions across various state university acts, the Governor acts as the *ex-officio* Chancellor of state-run universities, giving them the power to appoint Vice-Chancellors and oversee university administration.

4.2 Legislative Powers: The Structural Link to the Assembly

The Governor is an integral component of the State Legislature under **Article 168**, meaning no bill can become enforceable law without the Governor's participation.

4.2.1 Summoning, Proroguing, and Dissolution

Under **Article 174(1)**, the Governor has the authority to summon the houses of the state legislature to meet at such time and place as they think fit, provided that six months do not intervene between their last sitting in one session and the date appointed for their first sitting in the next session.

Article 174(2) empowers the Governor to prorogue the houses or dissolve the Legislative Assembly. As established by the Supreme Court in *Nabam Rebia (2016)*, the Governor cannot use these powers unilaterally to bypass the cabinet; they must act on the advice of the Chief Minister, unless there is clear proof that the government has lost its majority.

4.2.2 The Right to Address and Send Messages to the House

- **The General Address (Article 175):** The Governor has the right to address either house of the State Legislature, or both houses assembled together, and may require the attendance of members for that purpose. They also hold the power to send messages to the house regarding a pending bill, which the legislature is then required to consider with all convenient dispatch.
- **The Special Inaugural Address (Article 176):** At the commencement of the first session after each general election to the Legislative Assembly, and at the commencement of the first session of each year, the Governor must deliver a special address to the legislature. This address outlines the ruling government's legislative and policy agenda for the upcoming year.

4.2.3 Assent, Withholding, and Reservation of Bills

When a bill has been passed by the State Legislature, it must be presented to the Governor under **Article 200**. The Governor is then faced with four distinct constitutional paths:

1. **Grant Assent:** The Governor signs the bill, allowing it to become law.
2. **Withhold Assent:** The Governor refuses to sign the bill, preventing it from passing.
3. **Return the Bill:** If it is not a Money Bill, the Governor can return it with a message requesting reconsideration. However, if the legislature passes the bill again—with or without amendments—and presents it a second time, the Governor is constitutionally bound to grant assent.
4. **Reserve for the President:** The Governor can reserve the bill for the consideration of the President under **Article 201**. Reservation is mandatory if the bill reduces the powers of the High Court in a way that endangers its constitutional role.

4.2.4 The Ordinance-Making Power

When the State Legislature is not in session and the Governor is satisfied that circumstances exist which require immediate action, they can promulgate ordinances under **Article 213**.

An ordinance carries the same force and effect as an Act of the legislature. However, it must be laid before the State Legislature once it reconvenes and will automatically expire six weeks from the date of reconvening unless it is approved or voted down sooner.

Furthermore, the Governor cannot promulgate an ordinance without instructions from the President if a similar bill would have required the President's prior sanction or reservation. In *D.C. Wadhwa v. State of Bihar (1987)*, the Supreme Court ruled that repeatedly repromulgating ordinances without bringing them before the legislature is a subversion of the democratic process and a violation of the Constitution.

4.2.5 Legislative Nominations

In states that maintain a bicameral legislature (a Legislative Assembly and a Legislative Council), the Governor is empowered under **Article 171(3)(e)** to nominate **one-sixth** of the total members of the Legislative Council. These nominations must be drawn from individuals who possess special knowledge or practical experience in literature, science, art, the co-operative movement, or social service.

4.3 Financial Powers: Oversight of the State Exchequer

The Governor serves as a constitutional guardian of the state's finances, ensuring fiscal responsibility and proper allocation of funds before they reach the legislative floor.

4.3.1 Presentation of the Annual Financial Statement

Under **Article 202**, the Governor is constitutionally required to ensure that the "Annual Financial Statement"—the state budget—is laid before the house or houses of the legislature for each financial year. This statement details the estimated receipts and expenditures of the state government.

4.3.2 Prior Recommendation for Money Bills and Grants

- **Money Bills (Article 207):** A Money Bill dealing with taxation, public expenditure, or state borrowing cannot be introduced or moved in the Legislative Assembly except on the **prior recommendation** of the Governor.
- **Demands for Grants (Article 203(3)):** No demand for a financial grant can be made on the floor of the legislature unless it is explicitly accompanied by the Governor's recommendation, ensuring executive control over public spending.

4.3.3 Management of the Contingency Fund

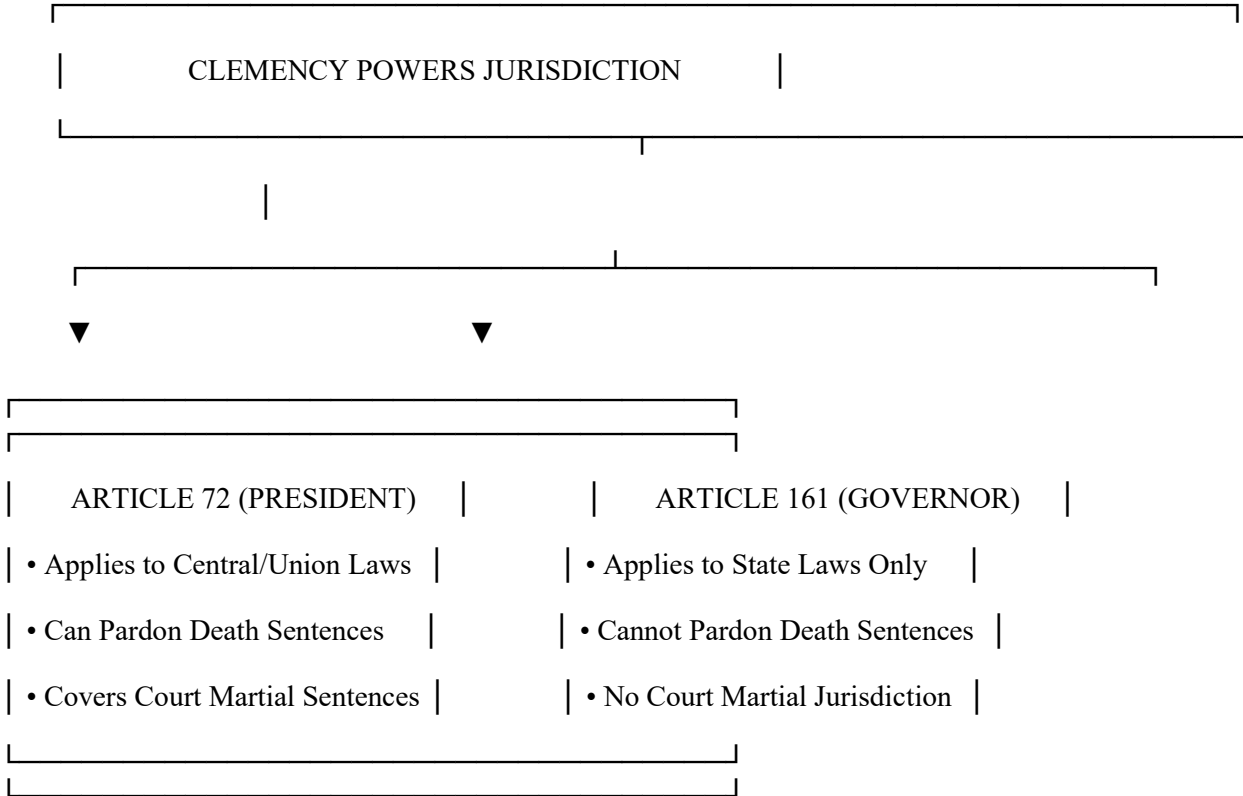
The **Contingency Fund of the State** is placed directly at the disposal of the Governor under **Article 267(2)**. This allows the Governor to make temporary financial advances out of the fund to meet unforeseen or emergency expenditures, pending final authorization and replenishment by the state legislature.

4.4 Judicial Powers: Clemency and the State Judiciary

While the Union President handles high-level federal judicial appointments, the Governor possesses distinct, independent judicial powers that reflect the legal sovereignty of the state executive.

4.4.1 Clemency and Pardon Powers

Under **Article 161**, the Governor has the power to grant pardons, reprieves, respites, or remissions of punishment, or to suspend, remit, or commute the sentence of any person convicted of an offense against any law relating to a matter to which the executive power of the State extends.



This power differs from the President's clemency powers under Article 72 in two major ways:

- The Governor cannot pardon a death sentence; they can only suspend, remit, or commute it.
- The Governor has no jurisdiction over sentences handed down by a military Court Martial.

The Supreme Court has clarified through various rulings (such as *Epuru Sudhakar v. State of Andhra Pradesh*) that while the exercise of clemency is an executive decision, it is subject to limited judicial review if it is found to be arbitrary, mala fide, or based on extraneous political considerations.

4.4.2 Appointment and Control of District Judges

Under **Article 233(1)**, appointments, postings, and promotions of District Judges in any state are made by the Governor. However, this power cannot be exercised unilaterally; the Governor must act in direct consultation with the High Court exercising jurisdiction over that state to protect the independence of the lower judiciary.

4.4.3 Appointments to the Subordinate Judicial Service

According to **Article 234**, appointments of persons other than district judges to the state judicial service are made by the Governor. These appointments must follow specific rules framed by the Governor in consultation with both the State Public Service Commission and the corresponding High Court, ensuring a merit-based and legally sound selection process.

The Scope and Abuse of Discretionary Powers

5.1 The Constitutional Ambiguity of Gubernatorial Discretion

The true point of friction in center-state relations lies within the Governor's discretionary powers. While the President of India is tightly bound by the "aid and advice" of the Union Cabinet under **Article 74(1)**, **Article 163(1)** explicitly carves out an independent sphere of action for the Governor. It mandates that the Governor must act on the aid and

advice of the State Council of Ministers, "except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion."

This textual distinction is expanded by **Article 163(2)**, which makes the Governor the sole judge of what falls within their discretion, stating that the validity of anything done by the Governor shall not be called in question on the ground that they ought or ought not to have acted in their discretion. This creates two distinct types of discretionary power:

- **Explicit (Constitutional) Discretion:** Powers explicitly mentioned by the text of the Constitution (e.g., Article 239H for administration of certain Union Territories, or paragraph 9 and 18 of the Sixth Schedule for tribal areas).
- **Implicit (Situational) Discretion:** Powers born out of political necessity or the breakdown of normal parliamentary conditions, where clear cabinet advice is either absent, conflicted, or constitutionally unviable.

5.2 Key Dimensions of Situational Discretion

5.2.1 Government Formation and Hung Assemblies

The appointment of a Chief Minister under **Article 164(1)** becomes a major discretionary exercise when no single political party or pre-poll alliance wins an absolute majority in the Legislative Assembly. In such "hung assembly" scenarios, the Governor must determine who is best suited to form a stable government that can command the confidence of the house.

Over the decades, this power has frequently been controversial. Governors have occasionally bypassed established pre-poll alliances to invite larger single parties, or vice versa, leading to accusations of partisan bias in favor of the ruling party at the Center. To curb this variation, the *Sarkaria Commission (1988)* laid down a strict, sequential order of preference for the Governor to follow:

1. An alliance of parties that was formed before the elections.
2. The single largest party which claims to form the government with the support of others.
3. A post-electoral coalition of parties, with all partners joining the government.
4. A post-electoral coalition of parties, with some partners joining the government and others supporting from outside.

5.2.2 The Reservation of Bills for Presidential Consideration

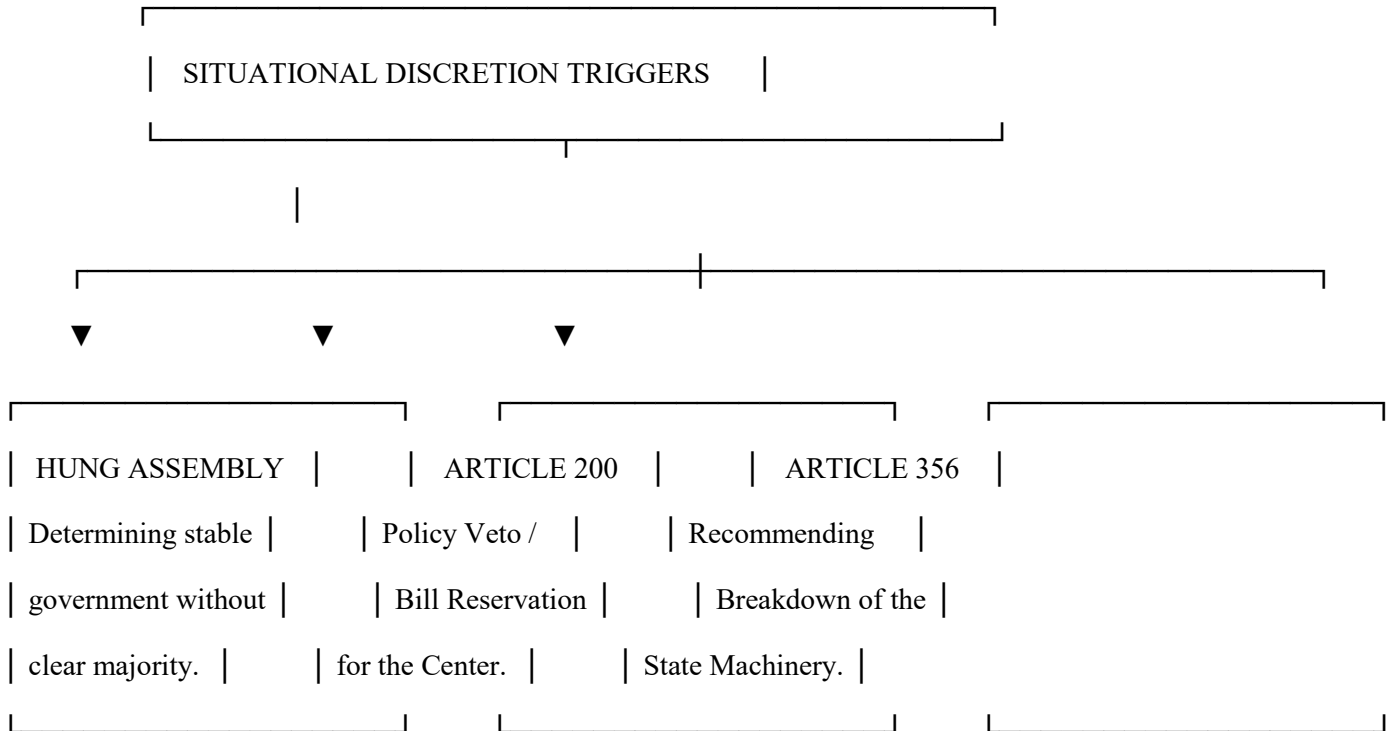
Under **Article 200**, the Governor can reserve a bill passed by the state legislature for the consideration of the President. While the text notes that reservation is *mandatory* if a bill threatens the constitutional position of the State High Court, the phrase "*or reserves for the consideration of the President*" allows for broad situational interpretation.

This discretion turns into an abuse of power when a Governor systematically reserves regular, non-threatening state legislation (such as bills on education, land reform, or local governance) simply because the policy diverges from the central government's political agenda. This effectively stalls state legislative autonomy under **Article 201**, as the President (acting on Union Cabinet advice) can veto or indefinitely delay the bill without a specified timeline.

5.2.3 Recommending President's Rule under Article 356

The most severe discretionary power is the authority to send a report to the President under **Article 356** stating that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of the Constitution. This "gubernatorial assessment" can trigger the invocation of President's Rule, leading to the dismissal of the elected state government and the suspension or dissolution of the Legislative Assembly.

Historically, this power was frequently weaponized by central governments to unseat opposition-led state ministries. Governors often bypassed the legislative floor entirely, declaring a "breakdown of constitutional machinery" based on subjective assessments of law and order or minor political realignments.



5.3 The Judicial Demarcation of Discretionary Limits

As these discretionary powers expanded, the Supreme Court of India stepped in to clarify that the Governor’s discretion is not absolute, arbitrary, or unreviewable. The judiciary has consistently ruled that the Governor remains a constitutional head bound by the overarching principles of democracy and federalism.

5.3.1 *S.R. Bommai v. Union of India (1994)*

A landmark nine-judge bench profoundly altered the application of Article 356. The Court held that:

- The Governor's report recommending President's Rule is not immune to judicial review; the courts can examine the material basis of the report to check for bad faith (*mala fides*) or irrelevant considerations.
- The floor of the Legislative Assembly is the **only legitimate arena** to test the majority of a government, meaning a Governor cannot unilaterally dismiss a Chief Minister based on private assessments or alignment changes outside the house.

5.3.2 *Rameshwar Prasad v. Union of India (2006)*

The Supreme Court ruled that a Governor cannot prevent a political party or coalition from trying to form a government after an election based on a subjective assumption that the coalition was formed through unfair political maneuvering. The Court emphasized that the Governor's role in government formation is to facilitate the democratic process, not to monitor or police political alignments.

5.3.3 *Nabam Rebia v. Deputy Speaker (2016)*

The Supreme Court provided its most detailed reading of Article 163, placing clear boundaries around situational discretion:

- The Court ruled that the Governor does not possess all-encompassing discretionary power; their discretion is strictly confined to areas explicitly authorized by the text of the Constitution.

- The Governor cannot summon, prorogue, or dissolve the Legislative Assembly under Article 174 on their own initiative without the aid and advice of the Chief Minister, provided the government maintains its majority.
- The Court made it clear that the Governor cannot act as a parallel legislative or executive authority to undermine the elected government.

Through these judgments, the judiciary has consistently maintained that gubernatorial discretion is a narrow, functional exception designed to protect the Constitution, not a political tool to override popular mandates or subvert state autonomy

The Governor and Centre–State Relations: The Fault Lines of Indian Federalism

6.1 The Structural Duality: Agent of the Union vs. Constitutional Head of the State

The core of the institutional crisis surrounding the office of the Governor lies in its dual capacity. The constitutional framework establishes the Governor as a dual entity: the formal, *de jure* head of the state executive apparatus, and an appointed representative of the Union Government.

This design was intended to serve as a constitutional bridge to ensure smooth communication, legislative harmony, and cooperative federalism between the central and state tiers of governance. However, in practice, this duality has frequently deteriorated into an institutional conflict, with the Governor's role as a federal observer overshadowing their responsibilities as a neutral head of state.

The Mechanism of Central Control

Because the Governor is appointed directly by the President under **Article 155**—which practically means nomination by the Union Prime Minister and Cabinet—and holds office during the "**pleasure of the President**" under **Article 156(1)**, the office lacks functional insulation from the political interests of the ruling party at the Center.

Unlike judges of the Supreme Court or the Comptroller and Auditor General, who enjoy security of tenure and strict removal procedures, the Governor remains vulnerable to sudden removal, transfer, or political pressure. This structural dependence makes the office susceptible to being used as a tool for central interference in state affairs, shifting the federal dynamic from cooperative to subordinate.

6.2 Major Arenas of Conflict and Political Misuse

6.2.1 The Weaponization of Article 356 (President's Rule)

Historically, the most severe strain on centre-state relations has been the use of **Article 356**, which allows for the imposition of President's Rule and the dismissal of an elected state government based on a Governor's report. The constitutional requirement is that the Governor must be 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.

During the era of single-party dominance and the subsequent early coalition years, this power was frequently used to destabilize state governments led by opposition parties. Governors routinely submitted reports alleging a breakdown of law and order or constitutional machinery based on subjective political factors or minor floor crossings, bypassing the constitutional requirement to test the government's majority on the floor of the Legislative Assembly.

6.2.2 The Legislative Veto and Stalling Strategies (Articles 200 and 201)

In contemporary centre-state relations, the focus of conflict has largely shifted from the dismissal of governments to the stalling of the legislative process under **Article 200**. When a bill passed by the state legislature is presented to the

Governor, the text does not specify a mandatory timeframe within which the Governor must grant assent, withhold assent, or return the bill for reconsideration.

This lack of an explicit deadline has led to what is colloquially termed a "gubernatorial pocket veto." Governors in opposition-ruled states have held onto critical legislative bills—concerning higher education, local administration, and socio-economic reforms—for months or years. Alternatively, they have used their discretion to reserve bills for the consideration of the President under **Article 201**, moving the legislative decision from the state capital to the Union Ministries, which can stall state policy initiatives.

6.2.3 Interference in State Universities and Statutory Bodies

A more recent area of conflict involves the Governor's role as the *ex-officio* Chancellor of state universities, a position granted by state legislative statutes rather than the constitutional text. Governors have used these chancellorship powers to unilaterally appoint Vice-Chancellors, reject panel recommendations made by elected state cabinets, and alter university administrative policies.

State governments argue that this bypasses ministerial responsibility over public education, leading several states to pass legislation aimed at stripping the Governor of these chancellor functions and vesting them in the Chief Minister or eminent academics.

6.3 The Impact on Federalism and the Neutrality Crisis

The Erosion of Cooperative Federalism

The structural friction caused by these actions challenges the core tenets of **cooperative federalism**, a principle the Supreme Court has declared part of the basic structure of the Indian Constitution. When a centrally appointed official systematically checks, delays, or counters the policy decisions of an elected state government, it can undermine the democratic mandate given to the provincial legislature. This dynamic can shift center-state relations away from collaboration and toward litigation and institutional gridlock.

The Neutrality Deficit

The framers of the Constitution envisioned the Governor as a non-partisan arbiter—a dignified political outsider who would remain detached from local party politics. However, the practice of appointing active political figures, retired bureaucrats, or individuals aligned with the ruling central party has contributed to a neutrality deficit.

When a Governor publically critiques state government policies, holds press conferences challenging executive decisions, or delays legislative assent, the office risks losing its standing as an objective mediator, instead becoming viewed as a parallel center of political authority within the state administration.

6.4 The Evolving Jurisprudence of Federal Balance

Faced with these structural conflicts, the Supreme Court of India has consistently stepped in to protect the federal framework and limit the potential for arbitrary gubernatorial action.

- ***State of Rajasthan v. Union of India (1977)***: While the Court initially granted wide latitude to the central government regarding the political assessment needed for Article 356, it established that the court could intervene if the satisfaction was based on reasons completely irrelevant to the breakdown of constitutional machinery.
- ***S.R. Bommai v. Union of India (1994)***: This landmark decision established a strict rule for center-state relations by making the Governor's subjective satisfaction under Article 356 subject to judicial review. The Court made the floor test mandatory, ensuring that a government's survival is decided by the elected legislature rather than the Governor's private assessment.
- ***State of Telangana v. Secretary to Governor (2023) & State of Punjab v. Principal Secretary (2023)***: In response to growing disputes over delayed legislation, the Supreme Court addressed the limits of Article 200.

The Court clarified that the phrase "as soon as possible" in the proviso to Article 200 carries significant constitutional weight. It ruled that a Governor cannot indefinitely delay a bill passed by the state legislature; if they choose to withhold assent, they must return the bill to the house for reconsideration immediately, ensuring the final legislative choice remains with the elected representatives.

Through this evolving legal framework, the judiciary has sought to restore the balance of federalism, reinforcing that the Governor's role is to facilitate the constitutional functioning of the state government rather than act as an executive check on its democratic authority

Judicial Interpretation and the Demarcation of Constitutional Boundaries

7.1 The Evolution of Judicial Review over Gubernatorial Actions

The constitutional design of independent India left several ambiguities regarding the scope of the Governor's office. This was primarily due to the retention of colonial-era terminology from the Government of India Act 1935 within **Article 163**. Because the text gave the Governor the right to determine what fell within their "discretion," early constitutional practice assumed these decisions were largely insulated from outside scrutiny.

However, as the office was increasingly used for political purposes in center-state disputes, the Supreme Court of India stepped in. The judiciary developed a robust framework of **judicial review** to protect the core tenets of federalism, cabinet responsibility, and democratic governance.

Historically, the judiciary shifted from a position of minimal intervention to active constitutional oversight. Early rulings often treated the Governor's "subjective satisfaction" (especially under Article 356) as a political question that courts should avoid. This hands-off approach changed over time as the Court recognized that unchecked gubernatorial power could undermine the democratic process at the state level.

The modern legal consensus establishes that while the Governor is granted constitutional immunity under **Article 361** from being personally answerable to a court for the exercise of their duties, the *actions* and *decisions* emanating from the office are fully subject to judicial review. If an exercise of discretion is found to be malicious (*mala fide*), arbitrary, or based on irrelevant considerations, the courts possess the authority to strike it down and restore the status quo.

7.2 Landmark Judicial Precedents

7.2.1 *Samsher Singh v. State of Punjab (1974)*

A major step in defining the nature of the state executive occurred with the ruling of a seven-judge bench in *Samsher Singh v. State of Punjab*. The Court was tasked with deciding whether the Governor could exercise executive functions personally and independently of the elected cabinet.

The Supreme Court firmly established the primacy of the parliamentary system, ruling that the Governor is the constitutional head of the state and must exercise their formal executive powers in harmony with the **aid and advice** of the Council of Ministers. The Court noted that the Indian Constitution adopts the Westminster model, meaning the real executive power rests with the cabinet, which is collectively responsible to the legislature.

The ruling made it clear that the Governor cannot act as a parallel administrative authority. Independent action is restricted to a few rare situations where clear cabinet advice is unavailable, such as choosing a Chief Minister immediately after an election without a clear majority, or dismissing a government that has lost its majority but refuses to leave office.

7.2.2 *S.R. Bommai v. Union of India (1994)*

Perhaps the most significant decision altering the landscape of center-state relations was *S.R. Bommai v. Union of India*. This nine-judge bench case addressed the frequent use of Article 356 to dismiss state governments led by opposition parties.

The Supreme Court established several key legal rules:

- **Federalism as a Basic Structure:** The Court declared that federalism is an essential part of the basic structure of the Indian Constitution, meaning the autonomy of the states cannot be arbitrarily checked by the central government.
- **Reviewability of Subjective Satisfaction:** The Court ruled that the material basis behind a Governor's report recommending President's Rule is subject to judicial review. The court can examine whether the data relied upon was relevant, objective, and free from political bad faith.
- **The Floor Test Mandate:** The judgment made the floor of the Legislative Assembly the **only legitimate arena** to test whether a government commands a majority. A Governor cannot dismiss an elected government based on private assessments or alignment shifts outside the house; the Chief Minister must be given the opportunity to prove their majority in the legislature.

7.2.3 *Nabam Rebia v. Deputy Speaker (2016)*

The Supreme Court provided a highly detailed examination of Article 163 in *Nabam Rebia v. Deputy Speaker*. This case arose from a constitutional crisis in Arunachal Pradesh, where the Governor had unilaterally advanced a legislative session and sought to guide the assembly's agenda without consulting the Chief Minister.

The Constitutional Bench clarified the limits of situational discretion:

- **Strict Textual Confines:** The Court ruled that Article 163(1) does not grant the Governor general, open-ended discretionary power. The Governor's discretion is strictly limited to areas explicitly assigned by the text of the Constitution.
- **Article 174 Controls:** The Court held that the Governor cannot use their discretion to summon, prorogue, or dissolve the Legislative Assembly under Article 174 on their own initiative. As long as the Council of Ministers enjoys the confidence of the house, the Governor is bound to follow the cabinet's advice regarding the timing and management of legislative sessions.

7.3 Contemporary Judicial Developments on Legislative Assent

In recent years, the focus of constitutional litigation has shifted to the management of state legislation under **Article 200**. Several states approached the judiciary seeking relief from situations where Governors held onto passed bills indefinitely, disrupting the legislative process.

The State of Punjab and State of Telangana Rulings (2023)

The Supreme Court addressed these issues directly in major rulings, including *State of Punjab v. Principal Secretary (2023)* and *State of Telangana v. Secretary to Governor (2023)*. The Court focused on the phrase "*as soon as possible*" found within the proviso to Article 200, which covers the returning of bills for reconsideration.

The Court established clear constitutional rules to guide this process:

- **The "As Soon As Possible" Mandate:** The judiciary ruled that the phrase "as soon as possible" carries significant legal weight. A Governor cannot use the lack of an explicit numeric deadline to stall bills indefinitely.
- **The Proviso Logjam Broken:** The Court clarified that if a Governor chooses to withhold assent to a bill, they cannot simply archive it. Instead, they must immediately return the bill to the State Legislature with a message requesting reconsideration. If the elected assembly passes the bill a second time—even without changes—the Governor is **constitutionally bound** to grant assent. The final legislative choice remains with the elected representatives.

7.4 Constitutional Morality and Democratic Accountability

Through this body of jurisprudence, the Supreme Court has consistently emphasized two core concepts: **constitutional morality** and **democratic accountability**.

JUDICIAL DOCTRINE MATRIX	
PRINCIPLE	INSTITUTIONAL MEANING
Constitutional Morality	<ul style="list-style-type: none"> • Adherence to democratic norms. • Preservation of federal balance. • Acting as a neutral umpire.
Democratic Accountability	<ul style="list-style-type: none"> • Primacy of the elected executive. • Majority tested only via floor test. • Finality of legislative choice.

Constitutional Morality

As articulated by the judiciary, constitutional morality requires public officials to look past the literal text of a statute and respect the underlying democratic values it serves. For the Governor's office, this means recognizing that the institution was designed to support cooperative federalism, not to serve as a political tool for the central government. The Governor is expected to act as a neutral arbiter who ensures constitutional continuity rather than an active political participant.

Democratic Accountability

The courts have continually reinforced that in a representative democracy, actual power rests with those who are accountable to the electorate. Since the Chief Minister and the Cabinet derive their authority from a popular mandate, their policy decisions cannot be blocked by an appointed official who lacks direct democratic accountability.

By defining these boundaries, the judiciary has worked to ensure that the Governor's office functions as a stabilizing mechanism for the Constitution, preserving the balance between central oversight and state legislative autonomy.

Case Law Analysis: The Pillars of Gubernatorial Jurisprudence

To understand how the office of the Governor functions in modern India, one must look beyond the written text of the Constitution and examine the landmark judgments delivered by the Supreme Court. Over the decades, the judiciary has stepped in to clarify ambiguous phrasing, curb political misuse, and protect the principles of federalism and democracy.

The following sections provide a detailed legal analysis of the four landmark cases that define the constitutional boundaries of the Governor's office.

8.1 *Shamsher Singh v. State of Punjab (1974)*: Primacy of the Parliamentary System

8.1.1 Background and Legal Issue

The case of *Shamsher Singh v. State of Punjab* (AIR 1974 SC 2192) arose when two judicial officers of the Punjab Subordinate Judicial Service were terminated from their services. The termination orders were signed by the Governor of Punjab, acting on the advice of the state executive, but without the personal involvement or individual evaluation of the Governor.

The primary legal issue brought before the Supreme Court was whether the Governor, in whom the executive power of the State is vested under **Article 154**, must exercise their constitutional powers personally and independently, or whether they are bound to act in accordance with the collective **aid and advice** of the Council of Ministers.

8.1.2 The Supreme Court's Holding

A seven-judge Bench of the Supreme Court delivered a unanimous ruling that remains the foundation of parliamentary jurisprudence in India. The Court held that the Indian Constitution adopts the Westminster model of parliamentary government at both the Union and State levels. Consequently, the Governor is the constitutional, ceremonial, or *de jure* head of the State, whereas the real executive power rests with the *de facto* executive—the Chief Minister and the Council of Ministers.

The Court explicitly ruled that whenever the Constitution requires the "satisfaction" of the Governor for any executive or legislative function, it does not mean the personal satisfaction of the individual holding the office. Instead, it refers to the **constitutional satisfaction** of the collective cabinet.

8.1.3 Constitutional Impact

Shamsher Singh firmly established that the Governor cannot act as a parallel or independent executive authority. The judgment limited gubernatorial autonomy by establishing that the Governor must act on ministerial advice for almost all official duties.

The Court noted very few narrow exceptions where a Governor could act independently. These are restricted to rare, situational requirements where clear cabinet advice is unavailable, such as choosing a Chief Minister following a hung election or deciding on the dismissal of a government that has clearly lost its legislative majority but refuses to resign.

8.2 *S.R. Bommai v. Union of India (1994): Restricting the Misuse of Article 356*

8.2.1 Background and Legal Issue

During the 1980s and early 1990s, the Union Government frequently used **Article 356** to dismiss elected state governments led by opposition political parties. In *S.R. Bommai v. Union of India (AIR 1994 SC 1918)*, the Supreme Court heard a cluster of petitions challenging the dismissal of several opposition-led state governments (including Karnataka, Meghalaya, and Nagaland) based on subjective gubernatorial reports alleging a "breakdown of constitutional machinery."

The central legal issue was whether the Governor's report and the President's subsequent "subjective satisfaction" under Article 356 were completely insulated from judicial scrutiny as political questions, or whether they were subject to judicial review.

8.2.2 The Supreme Court's Holding

A historic nine-judge Bench issued a landmark ruling that protected the independence of state governments. The Court established that federalism is part of the **Basic Structure** of the Indian Constitution, meaning the autonomy of the states cannot be subordinated to central political interests.

The Court ruled that while the President's proclamation is based on subjective satisfaction, the material on which that satisfaction is formed—most notably the **Governor's report**—is fully subject to **judicial review**. The courts can examine whether the material relied upon by the Governor was relevant, objective, and free from bad faith (*mala fides*). If the report is found to be arbitrary or politically motivated, the Court has the power to declare the proclamation unconstitutional and restore the dismissed state government.

8.2.3 Constitutional Impact

Bommai introduced a mandatory procedural rule: **the floor of the Legislative Assembly is the only legitimate arena to test whether a government commands a majority**. A Governor cannot unilaterally dismiss an elected government based on private headcounts or alignment shifts outside the house. The Chief Minister must be given the opportunity to prove their majority via a transparent floor test, effectively reducing the arbitrary use of Article 356 in center-state relations.

8.3 *B.P. Singhal v. Union of India (2010): Defining the Pleasure Doctrine and Tenure Security*

8.3.1 Background and Legal Issue

Under **Article 156(1)**, the Governor holds office during the "**pleasure of the President**." Historically, whenever a new political coalition assumed power at the Center, it routinely dismissed or transferred sitting Governors appointed by the previous administration. Following the change of central government in 2004, several Governors were dismissed simultaneously, leading to a legal challenge in *B.P. Singhal v. Union of India (2010) 6 SCC 331*.

The legal issue was whether the "pleasure doctrine" under Article 156(1) gave the central government absolute, unrestricted power to remove a Governor at any time without providing a reason, or whether there were implied constitutional limitations to this authority.

8.3.2 The Supreme Court's Holding

A five-judge Constitution Bench balanced the central government's authority with the need for institutional stability. The Court confirmed that because the Constitution does not outline specific grounds for the removal of a Governor, the President (acting on the advice of the Union Cabinet) is not required to provide reasons before withdrawing their "pleasure."

However, the Court added a major limitation: **the withdrawal of pleasure cannot be arbitrary, whimsical, or capricious**. The removal of a Governor cannot be based on purely political disagreements or a change of power at the center. The Governor is a high constitutional functionary, not an employee of the central government.

8.3.3 Constitutional Impact

B.P. Singhal established that while a Governor does not possess absolute security of tenure like a judge, their removal is subject to judicial review if it is found to be arbitrary or politically motivated. If a prima facie case of arbitrary removal is established, the court can compel the Union Government to produce the underlying records and material to verify that the decision was made for valid reasons, such as physical incapacity, moral turpitude, or actions threatening national security.

8.4 *Nabam Rebia v. Deputy Speaker (2016)*: Securing Legislative Independence

8.4.1 Background and Legal Issue

The case of *Nabam Rebia v. Deputy Speaker (2016) 8 SCC 1* emerged from a severe constitutional crisis in Arunachal Pradesh. A group of dissident legislators sought to unseat the ruling government. The Governor, acting independently without consulting the Chief Minister or the Cabinet, issued an order advancing the scheduled session of the Legislative Assembly and directed the house to prioritize a resolution for the removal of the Speaker.

The legal issue centered on the scope of **Article 163** read alongside **Article 174**. The question was whether the Governor could use their discretionary powers to summon, prorogue, or guide the business of the legislative assembly independently of the elected cabinet.

8.4.2 The Supreme Court's Holding

A five-judge Constitution Bench ruled against the Governor's actions, stating they overstepped constitutional boundaries. The Supreme Court provided a highly detailed reading of Article 163, clarifying that the Governor's discretionary powers are strictly limited to areas explicitly authorized by the text of the Constitution.

The Court held that **Article 174**, which grants the power to summon, prorogue, and dissolve the assembly, is not a matter of independent gubernatorial discretion. As long as the elected Council of Ministers commands the confidence of the house, the Governor **must act on the aid and advice** of the cabinet regarding the timing and management of legislative sessions. The Governor cannot act as a parallel legislative or executive authority to bypass or destabilize an elected government.

8.4.3 Constitutional Impact

Nabam Rebia protected the independence of the state legislature from executive overreach. It made it clear that the Governor cannot use their position to influence internal legislative proceedings or assist political factions within the house. The ruling reinforced that in a representative democracy, actual authority rests with the elected representatives who are directly accountable to the electorate.

8.5 Comparative Synthesis of Landmark Judgments

The evolution of these judicial doctrines can be summarized across four main areas of gubernatorial functioning:

- **Executive Primary Axis (*Samsher Singh*)**: Established the core rule that real executive authority rests with the elected state cabinet, reducing the Governor's role to a titular head of state.
- **Federal Protection Basis (*S.R. Bommai*)**: Subjected the Governor's emergency assessment under Article 356 to judicial oversight and established the floor test as the only legitimate method for measuring a government's majority.
- **Institutional Stability Anchor (*B.P. Singhal*)**: Protected the stability of the office by prohibiting arbitrary, politically motivated removals under the pleasure doctrine.

- **Legislative Autonomy Shield (*Nabam Rebia*):** Prevented the Governor from using situational discretion to interfere with assembly sessions or bypass cabinet advice on legislative timing.

The Constituent Assembly Debates: Framing the Original Intent

The true constitutional purpose, political character, and operational boundaries of the Governor's office cannot be fully understood without examining the historic debates of the Constituent Assembly between 1947 and 1949. The framing of these provisions witnessed intense intellectual conflict. Members faced a central dilemma: *How could an institution originally designed for British colonial oversight fit within a democratic republic based on popular sovereignty and federal autonomy?*

9.1 The Pivot from an Elected to an Appointed Governor

The initial design for the post-independence Governor was fundamentally different from the current framework. In July 1947, the Provincial Constitution Committee, chaired by **Sardar Vallabhbhai Patel**, recommended that the Governor be **directly elected** by the citizens of each state on the basis of universal adult franchise. The early drafts assumed that an elected Governor, possessing a direct democratic mandate, could legitimately exercise discretionary powers to maintain a federal balance.

However, by May 1949, the Assembly completely reversed its position. Led by **Dr. B.R. Ambedkar** and **Jawaharlal Nehru**, the drafting committee realized that a directly elected Governor would create a dangerous dual-power dynamic within the state executive.

The Conflict of Dual Mandates

Nehru and Ambedkar argued that a directly elected Governor would inevitably clash with the elected Chief Minister for political primacy. Both would claim a direct mandate from the people, leading to institutional gridlock, ego clashes, and instability within the state executive.

The Unitary Imperative Post-Partition

In the wake of Partition, the framers prioritized national unity and stability. They determined that a centrally appointed Governor, acting as an agent of the Central Government, was necessary to maintain a unitary thread across the country and counter separatist tendencies in the provinces. Consequently, the Assembly abandoned the elective model and adopted the Canadian framework, where the Governor is appointed directly by the President of India (acting on the advice of the Union Cabinet).

9.2 The Reassurances of Dr. B.R. Ambedkar: A Titular Head

The shift to a centrally appointed Governor sparked intense resistance from members like **H.V. Kamath**, **Rohini Kumar Chaudhuri**, and **Prof. K.T. Shah**. They argued that an appointed office would replicate British autocracy, undermine provincial autonomy, and turn the Governor into a political instrument of the ruling party at the Center.

To soothe these concerns, **Dr. B.R. Ambedkar** delivered a seminal address to the Assembly, defining the intended limits of the office and establishing that the Governor was meant to function like the President at the Union level:

"The Governor under the Constitution has no functions which he can exercise by himself. This House must remember that standard constitutional position. According to the principles of the Constitution, he is required to follow the advice of his Ministry in all matters... The Governor's duties are not executive, but rather advisory and supervisory. He is the clean, non-partisan umpire who stands above the political fray."

Dr. Ambedkar explicitly stated that the Governor was intended to be a **constitutional head rather than an independent authority**. He emphasized that the real executive power rests with the Chief Minister and the Council of Ministers, who

are directly accountable to the elected legislature. The Governor's role was to represent the continuity of the state structure, acting as a stabilizing mechanism rather than a parallel center of political authority.

9.3 The Retained Discretionary Phrase: A Constitutional Loophole

Despite Dr. Ambedkar's democratic assurances, a major contradiction occurred during the drafting process. When the committee finalized what is now **Article 163**, they chose to retain the language from Section 50 of the colonial Government of India Act 1935: "*except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.*"

Members of the Assembly pointed out that while the text governing the President of India (**Article 74**) bound the President tightly to cabinet advice, the text governing the Governor (**Article 163**) explicitly preserved an autonomous pocket of discretion.

The Original Assumption vs. Historical Reality

The framers chose to leave this language intact because they assumed that political conventions, democratic maturity, and non-partisan appointments would keep this discretionary power dormant. They envisioned the Governor using discretion only in rare crisis situations—such as a total breakdown of law and order or a fractured electoral mandate—to facilitate government formation, rather than to disrupt regular administration.

By leaving this colonial-era loophole open, the framers bequeathed a structural tension to independent India. The retention of this text set the stage for ongoing constitutional conflicts between elected state ministries and centrally appointed Governors, highlighting the divergence between the original intent expressed in the debates and the literal language left within the statute.

Commission Reports and Systemic Reform Blueprints

The persistent friction surrounding the Governor's office in India's post-independence history has prompted several high-level constitutional and administrative committees to evaluate its functioning. As the political landscape shifted from single-party dominance to complex multi-party coalitions and federal polarization, the office frequently became an institutional battleground.

To address this systemic volatility, successive Union Governments commissioned comprehensive reviews of center-state relations. Among these, the **Sarkaria Commission (1988)** and the **Punchhi Commission (2010)** stand as the most authoritative, detailed, and legally rigorous frameworks for reform. Both commissions meticulously analyzed how colonial language, political appointments, and unchecked discretion threatened cooperative federalism, offering concrete blueprints to restore the neutrality and dignity of the office.

10.1 The Sarkaria Commission on Centre-State Relations (1988)

Appointed in 1983 under the chairmanship of Justice R.S. Sarkaria, a retired judge of the Supreme Court of India, this commission spent five years analyzing the structural imbalances within the Indian federal matrix. Its final report, running into thousands of pages, remains a foundational text on cooperative federalism.

10.1.1 Criteria for Appointment and the Neutrality Mandate

The Sarkaria Commission recognized that the root cause of gubernatorial overreach was the flawed appointment mechanism under **Article 155**, which allowed the ruling party at the Center to use the office for patronage. To ensure that the Governor functioned as a detached, sagacious arbiter rather than a partisan agent, the Commission recommended a strict, mandatory set of criteria for selection. The appointee must:

- Be an eminent person in some walk of life.

- Be a person from outside the state where they are appointed, ensuring they are insulated from local political networks and rivalries.
- Be a detached figure who has not been too intimately connected with the local politics of the state recently.
- Be a person who has not taken an active part in politics generally, and particularly in the recent past prior to their appointment.

Crucially, the Commission warned against appointing active politicians who might use the Raj Bhavan as a parallel political office or a launchpad to destabilize an incumbent state government led by an opposition party.

10.1.2 The Mandate for Consultation with the Chief Minister

To prevent the Center from unilaterally imposing a hostile Governor on a state, the Sarkaria Commission insisted that **Article 155** should be amended, or a firm political convention established, to make **consultation with the State Chief Minister mandatory** prior to the appointment. The Commission argued that a Governor cannot effectively fulfill their constitutional duties if they enter the state in an atmosphere of mutual distrust with the elected head of government.

10.1.3 Codifying Discretion in Hung Assemblies

To minimize the arbitrary exercise of situational discretion under **Article 164** during a fractured electoral mandate, the Commission codified a rigid, sequential order of preference that the Governor must follow when inviting a leader to form a ministry:

1. An alliance of parties that was formed before the elections (**Pre-Poll Alliance**).
2. The single largest party which claims to form the government with the support of others, including independents.
3. A post-electoral coalition of parties, with all partners joining the government.
4. A post-electoral coalition of parties, with some partners joining the government and others supporting from outside.

The Commission emphasized that the Governor's primary duty is to verify who can command a majority, and that this majority **must be tested exclusively on the floor of the Legislative Assembly** via a floor test, rather than through subjective, private assessments inside the Raj Bhavan.

10.2 The Punchhi Commission on Centre-State Relations (2010)

Two decades after the Sarkaria Report, the Union Government appointed the Second Commission on Centre-State Relations in 2007, headed by Justice Madan Mohan Punchhi, former Chief Justice of India. The Punchhi Commission's report, submitted in 2010, updated the federal discourse to address contemporary challenges, including the rise of regional parties, fractured coalitions, and new methods of legislative obstruction.

10.2.1 Clearer Textual Limits on Discretion and Bill Assents

The Punchhi Commission took note of growing constitutional deadlocks caused by Governors holding onto state-passed legislation indefinitely under **Article 200**. To end this "pocket veto" practice, the Commission proposed a definitive textual amendment:

- A specific timeframe must be hardcoded into Article 200. The Commission recommended that the Governor must decide on granting assent, withholding assent, or returning a bill for reconsideration within **six months** of receiving it.
- It argued that allowing an appointed executive to paralyze the legislative will of an elected assembly indefinitely was completely contrary to democratic principles.

10.2.2 Reforming Tenure Security and the "Pleasure Doctrine"

The Punchhi Commission criticized the arbitrary use of the "pleasure doctrine" under **Article 156(1)**, which turned the office into a highly unstable position subject to the whims of changing central regimes. To restore the independence of the office, the Commission recommended:

- The phrase "during the pleasure of the President" should be deleted or heavily restricted.
- The Governor should be granted a **guaranteed, stable five-year tenure**, and their removal should not be left to the political convenience of the Union Cabinet.
- If a Governor must be removed before their term expires, it should only be done through a formal, structured procedure analogous to the **impeachment process of a High Court or Supreme Court Judge**, based on proven misbehavior or incapacity.

10.2.3 Constitutionalizing the "Floor Test" and Limiting Emergency Powers

Building upon the judicial framework laid down in *S.R. Bommai*, the Punchhi Commission recommended explicit amendments to **Articles 355 and 356**. It argued that the Center should bring localized, troubled areas under control without dismissing an entire state government.

Furthermore, it insisted that the Governor must give a sitting Chief Minister a strict timeline (not exceeding a few days) to prove their majority on the floor of the house before even considering a report to the Center alleging a systemic "breakdown of constitutional machinery."

10.2.4 Stripping the Governor of Statutory Chancellorships

A highly progressive and forward-looking recommendation made by the Punchhi Commission was to insulate public universities from political conflicts. The Commission observed that the practice of making the Governor the *ex-officio* Chancellor of state universities was a statutory burden inherited from colonial-era university acts, not a constitutional requirement.

It explicitly recommended that **Governors should not be burdened with statutory positions such as Chancellorship of universities**, as this routinely brought the office into direct administrative conflict with the state's education ministry, compromising the Governor's primary role as a neutral constitutional overseer.

10.3 Comparative Summary of Commission Recommendations

The systemic reforms advocated by both commissions share a common objective: transforming the office from a tool of central control into a stable guardian of the Constitution.

- **Appointment Paradigm:** The Sarkaria Commission focused on the personal background of the appointee (requiring non-political, eminent outsiders) and mandatory consultation with the Chief Minister. The Punchhi Commission reinforced this by suggesting the creation of a formal selection committee including the Prime Minister, Home Minister, Speaker of the Lok Sabha, and the concerned Chief Minister.
- **Tenure Insulation:** While Sarkaria advocated for preserving stable tenures through healthy political conventions, Punchhi went a step further by demanding the textual deletion of the absolute "pleasure doctrine" and replacing it with a rigorous, formal impeachment process.
- **Legislative and Emergency Discretion:** Sarkaria provided a strict manual for handling hung assemblies and testing majorities via floor tests. Punchhi built upon this by introducing a strict six-month deadline for processing legislative bills under Article 200 and advocating for localized, surgical interventions instead of sweeping impositions of President's Rule under Article 356.

Despite the depth and clarity of these recommendations, successive central governments have been slow to implement them into enforceable law or binding constitutional amendments. Consequently, the reports of the Sarkaria and Punchhi Commissions remain highly respected guidelines for systemic reform, representing an unfulfilled ideal for achieving a true balance in cooperative federalism.

Comparative Constitutional Study: Regional Executives in Global Federalisms

To fully assess the structural strengths and architectural vulnerabilities of the Governor's office in India, it is necessary to examine it alongside other global models. The Indian framework—a quasi-federal system with a strong centralizing bias and a Westminster parliamentary style of governance—is not the only method for organizing sub-national or regional executives.

By analyzing how different federal systems allocate power to regional executives, we can identify three distinct models: the separation of powers model, the classic Westminster model, and the hybrid model. This chapter provides a comparative constitutional analysis of regional executives across the United States, Canada, and Australia, highlighting how their methods of appointment, security of tenure, and political accountability contrast with the Indian system.

11.1 The Presidential Separation of Powers Model: The United States

The sub-national executive framework in the United States contrasts directly with the Indian model. While the Indian Governor is a centrally appointed, primarily ceremonial head of state operating alongside an elected Chief Minister, American Governors are powerful political figures who exercise full, independent executive authority within their jurisdictions.

11.1.1 The Source of Democratic Legitimacy

Under the constitutional frameworks of all fifty American states, the Governor is **directly elected by the citizens of that state** through a popular vote. This direct election provides the American Governor with a distinct democratic mandate.

Unlike the Indian system, where a dual executive exists (the Governor as *de jure* head and the Chief Minister as *de facto* head), the American state structure operates on a single executive system. The Governor serves simultaneously as both the head of state and the head of government, eliminating the potential for inter-institutional conflicts over political legitimacy.

11.1.2 Autonomy and Separation of Powers

The relationship between the executive and legislative branches in American states is governed by a strict **separation of powers**.

- An American Governor does not depend on a legislative majority to remain in power. They are elected for a fixed term (typically four years) and cannot be unseated by a legislative vote of no confidence.
- The state cabinet is not drawn from the legislature, nor is it collectively responsible to it. Instead, cabinet secretaries are appointed directly by the Governor (frequently subject to state senate confirmation) and answer exclusively to them.
- **The Veto Mechanism:** While an Indian Governor must eventually yield to the state legislature if a returned bill is passed a second time under Article 200, an American Governor possesses a robust executive veto. They can veto state legislation, and the state legislature can generally only override that veto by passing the bill again with a high supermajority (typically two-thirds) in both houses.

11.1.3 Absolute Tenure Insulation

The concept of a regional executive holding office during the "pleasure" of the national government does not exist in the American federal system. The federal government has no constitutional authority to appoint, transfer, suspend, or remove a state Governor. A Governor can only be removed from office before their term expires through a formal **impeachment process initiated by the state legislature** for specific, proven offenses, or through a popular **recall election** initiated by the state's citizens. This total structural independence insulates state governance from central interference.

11.2 The Classical Westminster Model: Canada and Australia

Canada and Australia, like India, are Commonwealth nations that adapted British parliamentary traditions into a federal structure. However, their management of regional executives reflects an adherence to constitutional conventions that has prevented the high levels of political friction seen in center-state relations within India.

11.2.1 The Canadian Provincial Executive: The Lieutenant Governor

In Canada, the formal executive head of a province is the **Lieutenant Governor**. Formally appointed by the Governor General of Canada on the advice of the federal Prime Minister under the *Constitution Act, 1867*, the appointment mechanism looks textually similar to India's Article 155.

However, the operational reality is guided by strict constitutional conventions:

- **Security of Tenure:** Unlike the unstable "pleasure doctrine" in India, a Canadian Lieutenant Governor is appointed for a stable, fixed term of at least five years. They cannot be removed by the federal government within those five years except "for cause," which must be formally communicated to both houses of the federal Parliament.
- **Adherence to Neutrality:** Although the textual power to reserve provincial bills for the federal government's consideration exists, this power has been dormant for decades due to strong constitutional conventions. The Canadian Lieutenant Governor functions as a strictly neutral, symbolic head of state who acts exclusively on the advice of the provincial Premier and Cabinet.

11.2.2 The Australian State Executive: The Governor

The Australian federal matrix provides another useful comparison for balancing regional autonomy with a Westminster-style framework. Within the six Australian states, the executive authority of the Crown is represented by a state **Governor**.

- **Direct Imperial Insulated Selection:** Historically, Australian state Governors were appointed by the British Monarch on the advice of the British government. However, following the passage of the *Australia Act 1986*, the system was reformed to protect state autonomy. Today, the Monarch appoints the state Governor **directly on the advice of the state Premier**. The federal government in Canberra has no legal role, voice, or veto in the appointment or removal of a state Governor.
- **Elimination of Central Agency:** Because the federal government cannot influence who becomes a state Governor, the office cannot be used as an instrument for central political interference. The Australian state Governor is accountable to the state's own constitutional framework and citizens, ensuring that the sub-national executive remains insulated from federal polarization.

11.3 Comparative Matrix of Regional Executives

The operational differences across these global models highlight how alternative structural designs affect regional executive autonomy and stability:

Constitutional Dimension	Republic of India	United States of America	Dominion of Canada	Commonwealth of Australia
Executive System	Dual Executive (<i>De Jure</i> vs. <i>De Facto</i>)	Single Executive (Governor as Sole Head)	Dual Executive (<i>De Jure</i> vs. <i>De Facto</i>)	Dual Executive (<i>De Jure</i> vs. <i>De Facto</i>)

Mode of Appointment	Central Appointment by President (Union Cabinet)	Direct Popular Election by State Citizens	Central Appointment by Governor-General (Federal Cabinet)	Appointed by Monarch on Direct Advice of State Premier
Tenure Security	Unstable; subject to the "Pleasure of the President"	Highly Stable; Fixed Term; Subject to Impeachment or Recall	Protected; Fixed Five-Year Term; Removal only "For Cause"	Highly Stable; Appointed on State Advice; Insulated from Center
Primary Accountability	Divided (Textually to Center; Conventionally to State)	Exclusively to State Electorate and Constitution	Exclusively to Provincial Legislature via Convention	Exclusively to State Legislature and Constitution
Discretionary Veto Scope	Broad; can withhold or reserve bills indefinitely	Strong; can veto bills, requiring a legislative supermajority	Dormant; convention prevents independent legislative blocks	Strictly limited by constitutional convention

11.4 Structural Insights for the Indian Matrix

This comparative study offers key insights into the structural issues affecting the Indian system:

The Vulnerability of Central Appointments combined with a Lack of Tenure Security

The comparison shows that the friction in India is not caused solely by the use of an appointment system; Canada also uses a central appointment mechanism for its provincial heads. Instead, the vulnerability in India stems from combining central appointment with an **absolute lack of tenure security** via the pleasure doctrine.

By allowing the central government to dismiss Governors without cause, the Indian framework leaves the office exposed to shifting political alignments at the Center. In contrast, Canada's "for cause" removal requirement and Australia's state-advised selection process insulate regional executives from central political pressure.

The Problem of Textual Discretion Without Conventional Restraints

In the American model, wide executive powers are balanced by direct accountability to the voters. In the Canadian and Australian models, broad textual powers are kept dormant by well-established parliamentary conventions that prioritize the choices of the elected assembly.

The Indian system remains stuck in a middle ground: it retains the extensive, active discretionary language of a colonial administration within the written text of **Articles 163 and 200**, but lacks the settled political conventions needed to prevent an appointed official from challenging the policies of an elected state government. This comparative analysis demonstrates that resolving the ongoing friction around the Indian Governor's office requires implementing formal structural safeguards, similar to those seen in other global federations, to align the office with the requirements of democratic accountability.

Critical Analysis: Balancing Emergency Oversight with Democratic Autonomy

The office of the Governor remains one of the most structurally complicated components of the Indian constitutional matrix. It is a unique institutional design that attempts to balance two potentially conflicting ideas: the Westminster system of state cabinet responsibility and a federal system with a strong centralizing bias.

This chapter provides a critical analysis of the arguments surrounding the office, examining the tensions between political vulnerability and constitutional necessity, and evaluates the path forward for systemic reform.

12.1 The Critique: Structural Vulnerabilities and Political Overreach

Critics of the institution argue that the modern office of the Governor has drifted away from the non-partisan umpire envisioned by the framers of the Constitution, instead becoming vulnerable to political influence. This structural vulnerability can be traced back to two main features of the constitutional text: the **appointment mechanism under Article 155** and the **pleasure doctrine under Article 156(1)**.

The Problem of Patronage and Partisan Agendas

Because Governors are appointed by the President on the direct advice of the Union Cabinet, the selection process is vulnerable to being used for political patronage. The office is frequently filled with active political figures, retired bureaucrats, or individuals aligned with the ruling party at the Center.

When an appointee with deep political ties is placed in a state run by an opposition party, the Raj Bhavan can transform from a neutral, symbolic space into a parallel center of political influence. This dynamic leads to actions that challenge the authority of the elected state government, including:

- **The Pocket Veto:** Holding onto state-passed bills indefinitely under Article 200 to stall the state's legislative agenda.
- **Public Critiques:** Airing public grievances against the state administration, which challenges the principle of executive confidentiality.
- **Strategic Reservations:** Reserving standard, non-threatening state bills for Presidential consideration under Article 201 to shift policy decisions to central ministries.

The Instability of the Pleasure Doctrine

The absolute lack of textual tenure security makes the Governor vulnerable to central pressure. A Governor who does not comply with the political goals of the Union Government can be summarily dismissed or transferred to a less prominent state without a formal explanation.

This vulnerability makes it difficult for a Governor to maintain a position of strict neutrality. The fear of sudden removal can influence their "subjective satisfaction" when handling delicate situations like hung assemblies or evaluating the breakdown of constitutional machinery under Article 356.

12.2 The Counter-Argument: The Necessity of a Constitutional Anchor

Supporters of the office argue that despite these operational issues, the institution remains an essential part of the Indian federal structure. They maintain that the Governor serves as a vital constitutional anchor, a stabilizing force designed to handle crises that an elected, partisan state government might not be structurally equipped to manage.

THE CRISIS-ANCHOR CAPACITY

CRISIS SITUATION

GUBERNATORIAL STABILIZING FUNCTION

Hung Assembly

Acts as an objective umpire to find a

stable prime minister/chief minister.

Political Deadlock

Uses messaging and summoning powers

to encourage legislative resolution.

Breakdown of Machinery

Provides an independent channel of

assessment to preserve national unity.

Navigating Political Instability

In a multi-party democracy characterized by fractured electoral mandates, unstable coalitions, and shifting political alliances, the state executive requires a continuous, non-partisan figure to ensure administrative stability. When a state government loses its majority or faces internal collapse, the Governor provides institutional continuity.

Without the Governor's situational discretion to appoint a temporary Chief Minister, summon the assembly for an immediate floor test, or accept a cabinet's resignation, a state executive could face severe gridlock during sudden political realignments.

Preserving National Unity

The framers purposefully designed the Indian federation with a strong centralizing bias to counter centrifugal, secessionist tendencies. The Governor acts as a crucial link between the Union and the States, ensuring that provincial administrations operate in harmony with the broader constitutional framework of the nation.

In genuine emergencies—such as widespread internal disturbance, systemic corruption, or an inability to form a viable government—the Governor's reporting mechanism provides the Center with an objective assessment needed to preserve the rule of law and protect national sovereignty.

12.3 The Synthesis: Blueprints for Structural Reform

Resolving the tension between democratic autonomy and central oversight does not require abolishing the office; rather, it demands structural reforms to align the institution with democratic principles and cooperative federalism. Based on judicial precedents and commission reports, these reforms center on three core areas: neutrality, fixed tenure, and institutional accountability.

12.3.1 Achieving Neutrality Through Collective Selection

To eliminate partisan bias from the selection process, the unilateral appointment power under Article 155 should be replaced by a formal, multi-member selection committee. As suggested by the Punchhi Commission, this panel should include:

- The Prime Minister of India
- The Speaker of the Lok Sabha
- The Union Home Minister
- The leader of the opposition in the Lok Sabha
- The Chief Minister of the concerned State

Making consultation with the Chief Minister a mandatory legal requirement ensures that the appointee enters the state with the trust of the local government, reducing potential for future institutional friction.

12.3.2 Securing Fixed Tenure by Restricting the Pleasure Doctrine

To insulate the Governor from central political pressure, the absolute "pleasure doctrine" under Article 156(1) must be limited.

- Governors should be granted a **guaranteed five-year tenure** that cannot be cut short by changing central administrations.
- If a Governor must be removed due to serious misconduct or physical incapacity, it should not be done via an executive decree. Instead, it should follow a formal **impeachment process in the State Legislature** or a structured inquiry by the Supreme Court, providing the office with the stability needed to act independently.

12.3.3 Enforcing Accountability via Hardcoded Deadlines

Finally, to address legislative deadlocks, the open-ended text of Article 200 must be reformed. The Supreme Court's 2023 rulings emphasized that the phrase "as soon as possible" requires swift action.

To formalize this rule, an explicit **six-month deadline** should be integrated into Article 200. If a Governor chooses to withhold assent, they must return the bill to the assembly within this timeframe. If the elected assembly passes the bill a second time, the Governor must grant assent, ensuring that the final policy choice remains with the elected representatives who are directly accountable to the electorate.

12.4 Conclusion

The office of the Governor was designed to be an objective, non-partisan guardian of the Constitution—a bridge facilitating smooth interaction between the Union and the States. While the institution remains essential for navigating constitutional crises and ensuring national cohesion, its structural vulnerabilities have occasionally allowed it to be used as a tool for central interference, straining the bonds of cooperative federalism.

By implementing these structural reforms—introducing a collective selection mechanism, securing fixed tenure, and binding discretionary powers to clear timelines—the Indian republic can protect provincial autonomy while maintaining necessary federal oversight. These changes would help transition the Governor's office into the sagacious, neutral umpire envisioned by the framers of the Constitution.

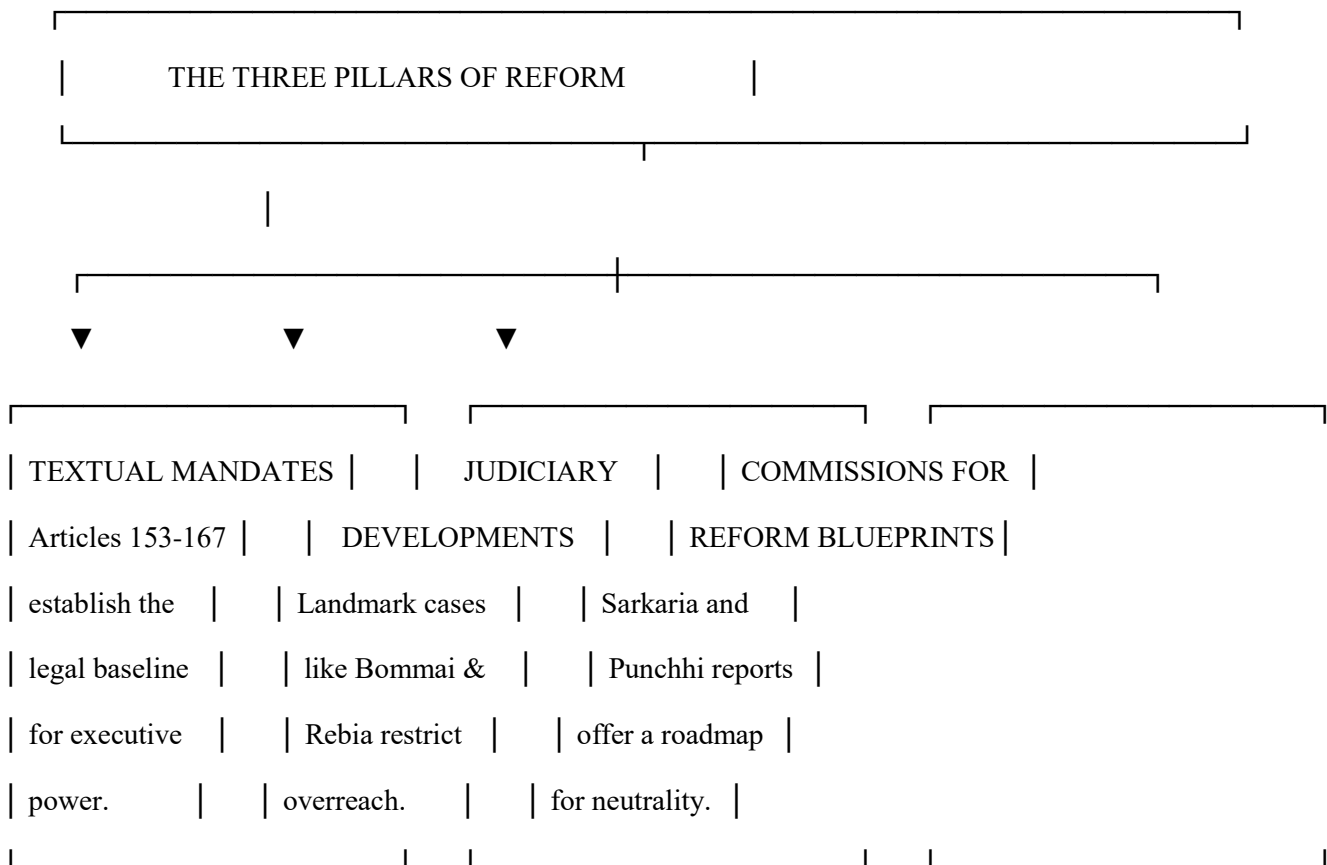
Conclusion: Reimagining the Gubernatorial Office for True Cooperative Federalism

The office of the Governor stands as one of the most structurally complex and legally contested institutions within the Indian constitutional architecture. Designed as a vital node linking the Union and the States, its evolution from a colonial instrument of imperial control under the British Raj to a constitutional protector of a democratic republic reflects the unique challenges of India’s nation-building project.

As analyzed throughout this study, the ongoing friction surrounding the office is not merely a product of contemporary political rivalries; it is deeply rooted in the textual contradictions left behind by the framers of the Constitution. By retaining the discretionary phrasing of the **Government of India Act 1935** within **Article 163**, while simultaneously trying to establish a Westminster-style parliamentary democracy driven by popular sovereignty, the Constituent Assembly created an institutional dualism that remains a major fault line in Indian federalism.

13.1 The Dynamic Interplay of Power

The constitutional boundaries of the Governor's office are continuously shaped by three major forces: textual mandates, judicial declarations, and reform proposals.



The Textual Baseline

The literal text of **Articles 153 to 167** establishes the baseline for gubernatorial authority. While Article 154 vests the formal executive power of the state in the Governor, Article 163 binds that power to the aid and advice of the elected cabinet.

The structural issue arises because the text lacks specific deadlines for legislative assent under **Article 200** and contains a broad "pleasure doctrine" under **Article 156(1)**. This combination makes the office vulnerable to central political influence, allowing an appointed official to occasionally stall or complicate the initiatives of an elected state government.

The Judicial Correction

Faced with regular constitutional deadlocks, the Supreme Court of India has served as a key protector of democratic governance. Through landmark rulings such as *Samsher Singh (1974)*, *S.R. Bommai (1994)*, and *Nabam Rebia (2016)*, the judiciary has consistently limited the scope of situational discretion.

The courts have established that the Governor is a titular head of state rather than an active political executive, made the floor test the mandatory method for determining a legislative majority, and subjected the Governor's reports to judicial review. Furthermore, the Court's **2023 rulings on Article 200** made it clear that the phrase "as soon as possible" prevents the use of an indefinite pocket veto, ensuring that the final legislative authority remains with the elected assembly.

The Reform Framework

While the judiciary has addressed specific instances of overreach, systemic stability requires structural changes. The reports of the **Sarkaria Commission (1988)** and the **Punchhi Commission (2010)** provide a clear roadmap for these adjustments.

Their recommendations—including creating a multi-member selection committee that includes the state Chief Minister, replacing the absolute pleasure doctrine with a formal removal process, and implementing strict six-month deadlines for processing legislative bills—offer a comprehensive strategy to restore the non-partisan character of the office.

13.2 Achieving a True Federal Balance

The solution to the institutional friction surrounding the Governor's office does not require abolishing the position. As a stabilizing mechanism during hung assemblies, a legal bridge to the central government, and a guardian of constitutional continuity during emergencies, the Governor remains an essential component of the Indian federal matrix. Instead, the goal is to align the office with the requirements of **democratic accountability** and **cooperative federalism**.

For a multi-party democracy to function smoothly, the Governor must act as the neutral, sagacious umpire envisioned by Dr. B.R. Ambedkar—a *paterfamilias* who stands above day-to-day party politics. This transition requires moving beyond a reliance on unwritten political conventions and hardcoding these protections directly into the constitutional framework.

By implementing formal selection committees, securing fixed tenures, and binding executive discretion to clear timelines, the Indian republic can protect provincial autonomy while maintaining necessary central oversight. These reforms are essential to ensure that the Governor's office works to protect the unity of the nation while fully respecting the democratic mandate of the states.

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