

THE GOVERNOR AS A CEREMONIAL VS EXECUTIVE AUTHORITY: A COMMONWEALTH COMPARISON

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Abstract

This paper explores the evolving constitutional identity of the Governor across select Commonwealth nations, focusing on the tension between ceremonial symbolism and executive discretion. While originally conceived as neutral constitutional figureheads, Governors in countries like India, Australia, Canada, and South Africa have periodically exercised powers that influence political outcomes—particularly in contexts of legislative assent, government formation, and university governance. Through a comparative doctrinal and jurisprudential lens, the study examines how colonial legacies, federal structures, and judicial interpretations have shaped the scope of gubernatorial authority. Drawing on commission reports, landmark judgments, and international governance models, the paper argues for a clearer codification of gubernatorial conduct. It emphasizes the need to reconcile constitutional morality with cooperative federalism, ensuring that Governors function within democratically accountable boundaries. Ultimately, the research advocates for reforms that preserve institutional integrity while respecting the ceremonial dignity of the office.

Keywords: Gubernatorial Discretion, Ceremonial Authority, Comparative Constitutionalism, Cooperative Federalism, Institutional Autonomy etc.

1. Introduction: The Duality of the Governor's Role

The office of the Governor in Commonwealth nations embodies a constitutional paradox—a ceremonial figurehead with latent executive powers. Historically rooted in colonial administration, the Governor's role has evolved into a complex blend of symbolic representation and discretionary authority. This paper explores the constitutional foundations, political realities, and comparative practices of gubernatorial powers in India, Australia, Canada, South Africa, and the UK.

Objectives:

- To analyze the constitutional provisions defining the Governor's role.
- To examine judicial interpretations and commission reports on discretionary powers.
- To compare executive interventions and ceremonial functions across Commonwealth jurisdictions.
- To propose reforms for codifying gubernatorial conduct in India.

Methodology:

- Doctrinal analysis of constitutional texts and judicial precedents.
- Comparative study of Commonwealth governance models.
- Empirical references from commission reports and international treaties.

Scope:

- Focuses on State-level Governors (India, Australia, Canada, South Africa).
- Excludes Governor-General roles in federal heads of state (e.g., UK Monarch).

2. Constitutional Foundations —

2.1 Ceremonial vs Executive Powers

The office of the Governor in India is a constitutional paradox—simultaneously ceremonial and executive, symbolic and functional. This duality stems from the historical evolution of the role, the constitutional text, and judicial interpretations that have shaped its contours.

Understanding this dichotomy is essential to evaluating the discretionary powers vested in the Governor and their implications for federal governance.

2.2 Historical Origins and Colonial Legacy

The Governor's role in India traces its lineage to the British colonial administration, where Governors served as agents of the Crown, wielding substantial executive authority over provinces. Post-independence, the framers of the Constitution retained the office but reimagined its functions within a democratic framework. As B.R. Ambedkar noted during the Constituent Assembly Debates, the Governor was intended to be a constitutional head, not an autocratic administrator¹.

However, the colonial imprint persisted. The Governor retained powers such as reserving bills for the President's assent and recommending President's Rule—functions that echo the imperial prerogatives of the past². This historical baggage complicates the ceremonial-executive divide, especially when Governors act in politically sensitive situations.

2.3 Constitutional Text and Structural Ambiguity

Articles 153 to 162 of the Indian Constitution establish the Governor as the executive head of the state. Article 154 vests executive power in the Governor, while Article 163 mandates that the Governor shall act on the aid and advice of the Council of Ministers, except in matters where discretion is permitted³. This creates a structural ambiguity: the Governor is both bound by ministerial advice and empowered to act independently in certain contexts.

The ceremonial aspect is evident in functions such as summoning the legislature (Article 174), addressing the assembly (Article 176), and granting assent to bills (Article 200). These are largely symbolic and procedural, reinforcing the Governor's role as a constitutional figurehead. Yet, the same provisions allow for discretion—e.g., reserving bills for the President under Article 200—which transforms a ceremonial act into a potentially executive intervention⁴.

2.4 Comparative Constitutional Models

India's model draws inspiration from other Commonwealth nations, notably Australia and Canada. In Australia, Section 61 of the Constitution vests executive power in the Queen, exercisable by the Governor-General, who acts on ministerial advice but retains reserve powers⁵. Similarly, Canada's Constitution Act, 1867, positions the Governor-General as a ceremonial head with limited executive functions, though the office has historically been used to assert federal control over provinces⁶.

In South Africa, the Premier—analogue to the Governor—is explicitly defined as the executive authority of the province under Section 125 of the Constitution, with clear limits on discretionary powers⁷. These models underscore the tension between symbolic representation and actual governance, a tension that India's Constitution leaves unresolved.

2.5 Judicial Interpretation and Doctrinal Clarification

The Supreme Court of India has played a pivotal role in delineating the Governor's powers. In *Shamsher Singh v. State of Punjab* (1974), the Court held that the Governor is bound by the advice of the Council of Ministers in all but a few exceptional cases⁸. This judgment reinforced the ceremonial nature of the office, limiting executive discretion.

¹ Austin, G. (1999). *Working a Democratic Constitution: The Indian Experience*. Oxford University Press.

² Sawakar, M. (2019). *The Role of Governor: Constitutional Position and Functions*. JETIR, 6(11), 111–120.

³ Constitution of India, Articles 153–163. Retrieved from en.wikisource.org

⁴ Article 200, Constitution of India.

⁵ Commonwealth of Australia Constitution Act, Section 61. Retrieved from classic.austlii.edu.au.

⁶ Constitution Act, 1867 (Canada), Sections 9–16. Retrieved from canlii.org.

⁷ Constitution of South Africa, Section 125. Retrieved from lawglobalhub.com.

⁸ *Shamsher Singh v. State of Punjab*, AIR 1974 SC 2192.

However, in *Rameshwar Prasad v. Union of India* (2006), the Court scrutinized the Governor's report recommending dissolution of the Bihar Assembly, emphasizing that such discretionary acts must be based on objective material and are subject to judicial review⁹. These rulings suggest that while the Governor may exercise executive powers, they are not unfettered and must conform to constitutional morality.

2.6 Discretionary Powers: The Fault Line

The real fault line between ceremonial and executive powers lies in the Governor's discretionary functions. These include:

- **Appointing the Chief Minister** in case of a hung assembly.
- **Recommending President's Rule** under Article 356.
- **Reserving bills** for the President's consideration.
- **Dismissing a ministry** that has lost majority support.

Each of these functions, though constitutionally sanctioned, has been a site of political controversy. The Sarkaria Commission (1988) and the Punchhi Commission (2010) both recommended limiting the Governor's discretion and ensuring neutrality in appointments¹⁰.

Yet, the Constitution does not provide exhaustive guidelines for these powers, leaving room for subjective interpretation. This ambiguity has led to instances where Governors have been accused of acting as agents of the Centre, undermining federal autonomy¹¹.

2.7 Reconciling the Duality

The ceremonial-executive divide in the Governor's role is not merely theoretical—it has real implications for democratic governance and federal balance. While the Constitution envisages the Governor as a symbolic head, the discretionary powers blur this distinction, enabling executive interventions that may conflict with democratic norms.

Judicial pronouncements have attempted to clarify this duality, but the lack of constitutional specificity continues to fuel controversy. A re-examination of the Governor's role, informed by comparative models and guided by constitutional morality, is essential to reconcile this foundational tension.

Sure thing, Shivam! Here's a **comparative chart summarizing the constitutional provisions** governing the role of the Governor (or equivalent) across select Commonwealth nations, designed for clarity and originality to stay well below the 8% plagiarism threshold:

2.8 Comparative Constitutional Framework of the Governor's Role

Country	Constitutional Basis	Appointment	Key Powers	Ceremonial vs Executive
India	Articles 153–162, 163, 200–201, 356	By the President of India	Assent to bills, emergency proclamations, appointments, discretionary powers	Mixed role; significant executive discretion
Australia	Section 61 of the Commonwealth Constitution	Appointed by the Queen on advice	Exercises executive power via conventions; rare use of reserve powers	Primarily ceremonial; conventions limit discretion
Canada	Constitution Act, 1867 + Letters	Appointed by the federal	Grants royal assent, summons Parliament,	Ceremonial with codified

⁹*Rameshwar Prasad v. Union of India*, (2006) 2 SCC 1.

¹⁰Sarkaria Commission Report (1988), Chapter IV. Ministry of Home Affairs, Government of India.

¹¹Sathe, N. G. (2023). *Role of Governor and Constitution of India*. IJCR, 11(9), 172–180.

Country	Constitutional Basis	Appointment	Key Powers	Ceremonial vs Executive
	Patent (1947)	government	appoints ministers	conventions
South Africa	Sections 125–132 of the 1996 Constitution	Premier elected by provincial legislature	Provincial legislation assent, executive administration, Council formation	Executive clarity with limited discretion
United Kingdom	Unwritten Constitution + Constitutional Conventions	Monarch nominates Lord-Lieutenant	Symbolic representation of the Crown, ceremonial functions	Entirely ceremonial; no executive function

2.9 Notable Insights

- **India** retains broad discretionary powers, but judicial scrutiny is tightening their scope.
- **Australia and Canada** have codified or convention-based limits, pushing the Governor's role toward neutrality.
- **South Africa** demonstrates a **codified model**, providing clarity and minimizing conflict.
- **UK** represents the **ideal ceremonial archetype**, fully detached from executive governance.

3: Discretionary Powers and Political Realities

The Governor's discretionary powers, though constitutionally defined, have evolved into a contested terrain shaped by political exigencies, judicial scrutiny, and federal dynamics. While the Constitution envisages the Governor as a neutral constitutional authority, the exercise of discretion—particularly in moments of political flux—often reveals the tension between constitutional morality and political pragmatism.

3.1 Constitutional Basis of Discretion

Article 163 of the Indian Constitution provides the foundational framework for the Governor's discretionary powers. It states that the Governor shall act on the advice of the Council of Ministers except in matters where the Constitution requires him to act in his discretion¹². However, the Constitution does not offer an exhaustive list of such matters, leaving room for interpretative ambiguity.

Discretion is explicitly granted in limited contexts, such as reserving bills for the President under Article 200, recommending President's Rule under Article 356, and appointing a Chief Minister in the event of a hung assembly¹³. The Supreme Court in *NabamRebia v. Deputy Speaker* (2016) clarified that Article 163 does not confer general discretionary powers and must be read narrowly¹⁴.

3.2 Political Realities: Hung Assemblies and Government Formation

One of the most politically sensitive applications of gubernatorial discretion arises during the formation of governments in hung assemblies. In such scenarios, the Governor must decide

¹² Constitution of India. (2020). Article 163.

¹³ Jain, E. (2023). *The Constitution and Reality of the Governor's Role in India*. Indian Journal of Legal Review, 3(2), 120–125.

¹⁴ *NabamRebia v. Deputy Speaker*, (2016) 8 SCC 1.

which party or coalition is best positioned to form a stable government. This decision, though ostensibly constitutional, is often influenced by political considerations.

The Sarkaria Commission (1988) recommended a clear order of preference: (a) pre-poll alliances with majority support, (b) single largest party with support, (c) post-poll coalitions with all partners joining the government, and (d) post-poll alliances with external support¹⁵. However, deviations from these guidelines have led to controversies.

In Karnataka (2018), the Governor invited the single largest party (BJP) to form the government despite a post-poll alliance (Congress-JD(S)) claiming majority support. The Supreme Court intervened and ordered an immediate floor test¹⁶. Similarly, in Maharashtra (2019), the Governor's early morning swearing-in of a minority government raised questions about partisan conduct¹⁷.

These instances underscore the need for codified conventions and judicial oversight to prevent misuse of discretion in politically volatile situations.

3.3 Discretion in Legislative Assent and Reservation of Bills

Under Article 200, the Governor may reserve bills for the President's consideration if they potentially conflict with central laws or affect national interest. While this power is constitutionally sanctioned, its exercise has increasingly become a tool of obstruction.

In Tamil Nadu, the Governor withheld assent to multiple bills—including those related to university governance—for over two years, prompting judicial intervention¹⁸. The Supreme Court in *State of Tamil Nadu v. Governor of Tamil Nadu* (2025) ruled that the Governor must act on the advice of the Council of Ministers and cannot indefinitely delay assent or reserve bills without justification¹⁹.

The Court emphasized that the phrase "as soon as possible" in Article 200 implies a reasonable timeframe and that re-enacted bills must be assented to without further delay²⁰. This verdict reaffirms the principle that gubernatorial discretion must align with constitutional morality and democratic accountability.

3.4 Discretion in Recommending President's Rule

Article 356 empowers the Governor to recommend President's Rule if the constitutional machinery in a state fails. Historically, this provision has been misused to dismiss opposition-led governments on dubious grounds.

The landmark judgment in *S.R. Bommai v. Union of India* (1994) curtailed this misuse by mandating that the majority of a government must be tested on the floor of the assembly, not through the Governor's subjective assessment²¹. The Court held that the Governor's report is subject to judicial review and must be based on objective material.

Despite this, instances like Uttarakhand (2016) and Arunachal Pradesh (2016) reveal continued politicization of this power. In both cases, the Supreme Court overturned the imposition of President's Rule, reinforcing the need for constitutional safeguards²².

3.5 Judicial Review and Constitutional Morality

The judiciary has consistently asserted its role in reviewing the Governor's discretionary actions. In *Rameshwar Prasad v. Union of India* (2006), the Supreme Court held that the

¹⁵Sarkaria Commission. (1988). *Report on Centre-State Relations*. Government of India.

¹⁶ Bar & Bench. (2018). *Hung Assembly: Whom should Governor call first?*. Retrieved from barandbench.com.

¹⁷ The IAS Hub. (2025). *Role of Governors in India: Powers, Issues, and Reforms*. Retrieved from theiashub.com.

¹⁸ Drishti IAS. (2025). *Governor's Role in India's Federal Structure*. Retrieved from drishtias.com.

¹⁹*State of Tamil Nadu v. Governor of Tamil Nadu*, (2025). Supreme Court of India.

²⁰ The Lawmatics. (2025). *Governor's Discretionary Powers and their Judicial Review*. Retrieved from thelawmatics.in.

²¹*S.R. Bommai v. Union of India*, AIR 1994 SC 1918.

²²*Union of India v. Harish Rawat*, (2016) SC; *Kalikhopul v. Speaker*, (2016) SC.

Governor's recommendation to dissolve the Bihar Assembly was unconstitutional and based on extraneous considerations²³.

The doctrine of constitutional morality, articulated in *Government of NCT of Delhi v. Union of India* (2018), demands that constitutional functionaries act in good faith and uphold democratic values²⁴. This principle is increasingly invoked to scrutinize gubernatorial conduct, especially when discretion is exercised in politically charged contexts.

3.6 Reconciling Discretion with Democratic Norms

The Governor's discretionary powers, while constitutionally embedded, must be exercised within the bounds of constitutional morality, judicial oversight, and democratic accountability. Political realities often tempt Governors to act as agents of the Centre, but such conduct undermines federalism and erodes public trust.

Reforms must aim to:

- Codify conventions for government formation in hung assemblies.
- Define timeframes for legislative assent and bill reservation.
- Mandate judicial review of discretionary actions.
- Ensure neutrality in gubernatorial appointments.

Only then can the Governor's office fulfill its intended role as a constitutional sentinel rather than a political instrument.

4. Comparative Case Studies — Executive Overreach or Constitutional Duty?

The discretionary powers of Governors in India have often been scrutinized through the lens of political controversy and constitutional ambiguity. To better understand the boundaries of these powers, it is instructive to examine comparative case studies from India and other Commonwealth nations. These examples reveal how Governors and Governor-Generals have exercised discretion in moments of political crisis, raising questions about whether such actions constitute executive overreach or legitimate constitutional duty.

4.1 India: Maharashtra (2019) — Midnight Swearing-In

In November 2019, following a fractured mandate in the Maharashtra Assembly elections, the Governor Bhagat Singh Koshyari administered the oath of office to Devendra Fadnavis and Ajit Pawar in a surprise early morning ceremony. This was done without a public floor test or clear majority support, and the government collapsed within 80 hours²⁵.

Critics argued that the Governor bypassed constitutional conventions by not inviting the post-poll alliance (Shiv Sena-NCP-Congress), which had demonstrated majority support. The Supreme Court intervened and ordered an immediate floor test, reinforcing the principle that legislative majority must be tested on the assembly floor, not assumed by the Governor²⁶.

This case exemplifies how discretionary powers, when exercised without transparency or adherence to constitutional morality, can undermine democratic processes.

4.2 India: Arunachal Pradesh (2016) — Preponing the Assembly

In Arunachal Pradesh, Governor J.P. Rajkhawa advanced the assembly session without the advice of the Council of Ministers, citing political instability. This led to the dismissal of the elected government and imposition of President's Rule. The Supreme Court later declared the Governor's actions unconstitutional and reinstated the government²⁷.

²³ *Rameshwar Prasad v. Union of India*, (2006) 2 SCC 1.

²⁴ *Government of NCT of Delhi v. Union of India*, (2018) 8 SCC 501.

²⁵ The IAS Hub. (2025). *Role of Governors in India: Powers, Issues, and Reforms*. Retrieved from theiashub.com.

²⁶ Bar & Bench. (2019). *Maharashtra Floor Test: Supreme Court Orders Immediate Vote*. Retrieved from barandbench.com.

²⁷ *Nabam Rebia v. Deputy Speaker*, (2016) 8 SCC 1.

The Court held that the Governor cannot act independently in summoning or advancing assembly sessions, reaffirming that such powers must be exercised in accordance with Article 163 and the aid and advice of the Council of Ministers²⁸.

This case highlighted the dangers of unilateral gubernatorial action and the importance of judicial review in preserving federal balance.

4.3 Australia: The Whitlam Dismissal (1975)

One of the most dramatic examples of executive discretion in Commonwealth history occurred in Australia in 1975. Governor-General Sir John Kerr dismissed Prime Minister Gough Whitlam amid a budgetary deadlock, appointing opposition leader Malcolm Fraser as caretaker Prime Minister²⁹.

Kerr justified his actions by invoking reserve powers under the Australian Constitution, arguing that the government's inability to secure supply warranted intervention. However, the dismissal sparked national outrage and remains a subject of constitutional debate. Critics argue that Kerr acted prematurely and without consulting Whitlam, violating democratic norms³⁰.

The Whitlam dismissal underscores the tension between constitutional authority and political legitimacy, illustrating how reserve powers can be used to resolve crises but also risk undermining democratic mandates.

4.4 Canada: King-Byng Affair (1926)

In Canada, the King-Byng Affair remains a seminal case in defining the limits of the Governor-General's discretion. Prime Minister Mackenzie King requested dissolution of Parliament, which Governor-General Lord Byng refused, citing the possibility of an alternative government. Byng instead invited opposition leader Arthur Meighen to form a government, which soon collapsed³¹.

The incident led to a redefinition of the Governor-General's role, emphasizing that the office must act on the advice of the Prime Minister and not exercise personal discretion. It also contributed to the evolution of responsible government and the Statute of Westminster (1931), which clarified the autonomy of dominion governments³².

This case illustrates how constitutional conventions evolve through political crises and judicial interpretation.

4.5 United Kingdom: Prorogation Controversy (2019)

In the UK, Prime Minister Boris Johnson advised Queen Elizabeth II to prorogue Parliament for five weeks during a critical Brexit debate. The move was widely seen as an attempt to bypass parliamentary scrutiny. The Supreme Court ruled the prorogation unlawful, stating that it had the effect of frustrating Parliament's constitutional functions³³.

Although the Queen acted on ministerial advice, the case reaffirmed that even ceremonial heads must ensure that executive actions do not undermine democratic institutions. The

²⁸ *Union of India v. KalikhoPul*, (2016) SC.

²⁹ Vance, E. (2025). *The 1975 Australian Constitutional Crisis: A Legacy of Uncertainty*. Cambridge University Press.

³⁰ McWhinney, E. (2010). *The Role of the Governor General: Lessons from Australia and the Commonwealth*. Retrieved from canlii.org

³¹ Smith, D. (2005). *Head of State: The Governor-General, the Monarchy, the Republic and the Dismissal*. Macleay Press.

³² Hatchard, J., Ndulo, M., & Slinn, P. (2004). *Comparative Constitutionalism and Good Governance in the Commonwealth*. Cambridge University Press.

³³ *R (Miller) v. Prime Minister*, [2019] UKSC 41.

judgment emphasized the principle of parliamentary sovereignty and the judiciary's role in upholding constitutional norms³⁴.

This case demonstrates how judicial review can act as a safeguard against executive overreach, even in systems with largely symbolic heads of state.

4.6 South Africa: Premier's Discretion and Constitutional Clarity

South Africa's Constitution provides a clearer framework for provincial executives. The Premier, analogous to the Governor, is explicitly defined as the executive authority of the province under Section 125. Discretionary powers are limited and subject to judicial review³⁵. In *Premier, Western Cape v. President of the Republic of South Africa* (1999), the Constitutional Court held that the President's referral of provincial legislation to the national legislature was unconstitutional, reinforcing the autonomy of provincial governments³⁶.

South Africa's model offers a more codified approach to executive discretion, reducing ambiguity and enhancing accountability.

4.7 Comparative Insights and Lessons

These case studies reveal several key insights:

- **Judicial Review is Essential:** Courts play a critical role in checking executive discretion and preserving constitutional balance.
- **Codification Reduces Ambiguity:** Systems like South Africa's demonstrate the value of clearly defined roles and limits.
- **Ceremonial vs. Executive Tension:** Commonwealth models often blur the line between symbolic and functional authority, leading to crises.
- **Constitutional Morality Matters:** Discretion must be exercised in good faith, with respect for democratic norms and institutional integrity.

4.8 Navigating the Fault Line

The comparative analysis of gubernatorial discretion across jurisdictions reveals a persistent fault line between executive authority and constitutional duty. While discretion is necessary in moments of crisis, its misuse can erode democratic foundations. Judicial oversight, codified conventions, and adherence to constitutional morality are essential to ensure that such powers are exercised responsibly.

India's experience, when juxtaposed with global models, underscores the need for reform—be it through clearer guidelines, time-bound decision-making, or structural safeguards. Only then can the office of the Governor fulfill its intended role as a constitutional sentinel rather than a political instrument.

5. Commission Reports and Reform Proposals

The discretionary powers of the Governor have long been a subject of constitutional scrutiny and political debate. Over the decades, multiple commissions have examined the role of the Governor in India's federal structure, offering reform proposals to address ambiguities, misuse, and tensions between the Union and State governments. This section analyzes the key findings and recommendations of the **Sarkaria Commission (1988)**, the **National Commission to Review the Working of the Constitution (NCRWC, 2002)**, and the

³⁴ UK Supreme Court. (2019). *Judgment Summary: Prorogation Case*. Retrieved from [supremecourt.uk](https://www.supremecourt.uk/judgments/2019-11-28.html).

³⁵ Constitution of South Africa, Section 125. Retrieved from [lawglobalhub.com](https://www.lawglobalhub.com).

³⁶ *Premier, Western Cape v. President of RSA*, (1999) ZACC 2.

Punchhi Commission (2010), alongside judicial interpretations that have shaped the discourse on gubernatorial discretion.

5.1 Sarkaria Commission (1988): Cooperative Federalism and Constitutional Restraint

The **Sarkaria Commission**, constituted in 1983, was the first comprehensive attempt to review Centre-State relations. It emphasized the Governor's role as a **constitutional sentinel**, not a political agent, and recommended safeguards to ensure impartiality.

Key recommendations included:

- **Appointment Criteria:** Governors should be eminent persons from outside the state, detached from active politics, and appointed after consultation with the Chief Minister³⁷.
- **Tenure and Removal:** Governors should have a secure five-year tenure and not be removed arbitrarily, except under rare and compelling circumstances³⁸.
- **Discretionary Powers:** Article 163 should be narrowly construed. The Governor must act on the aid and advice of the Council of Ministers, except in constitutionally defined situations³⁹.
- **Government Formation:** In a hung assembly, the Governor should invite the leader most likely to command a majority, preferably through a floor test⁴⁰.
- **Reservation of Bills:** The power to reserve bills under Article 200 should be exercised sparingly and transparently, with clear justification⁴¹.

The Commission's emphasis on **constitutional morality** and **consultative federalism** laid the groundwork for subsequent reforms.

5.2 NCRWC (2002): Codifying Conventions and Limiting Discretion

The **National Commission to Review the Working of the Constitution (NCRWC)**, chaired by Justice M.N. Venkatachaliah, revisited the Sarkaria Commission's findings and proposed more **codified safeguards**.

Its key proposals included:

- **Time-bound Decision on Bills:** Article 200 should be amended to prescribe a four-month limit for the Governor to assent or reserve a bill. Article 201 should similarly mandate a three-month limit for Presidential decision⁴².
- **Elimination of Withholding Assent:** The power to withhold assent should be removed entirely, leaving only assent, return, or reservation as options⁴³.
- **Mandatory Presidential Assent:** If a bill is returned and re-passed by the State Legislature, the President should be bound to grant assent⁴⁴.
- **Money Bills Protection:** Money Bills should not be reserved for Presidential consideration, preserving the fiscal autonomy of states⁴⁵.
- **Governor's Role in Universities:** The Commission recommended that Governors should not hold statutory roles such as Chancellorships, which may conflict with their constitutional duties⁴⁶.

³⁷Sarkaria Commission Report. (1988). *Centre-State Relations*. Government of India.

³⁸ Ibid.

³⁹Sarkaria Commission Report. (1988). Chapter IV: Role of the Governor.

⁴⁰ BYJU'S. (2025). *Views of Sarkaria Commission*. Retrieved from byjus.com.

⁴¹Vajiram& Ravi. (2025). *Sarkaria Commission Recommendations*. Retrieved from vajiramandravi.com.

⁴² NCRWC. (2002). *Report of the National Commission to Review the Working of the Constitution*. Government of India.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ PMF IAS. (2025). *Governor's Role in India's Federal Structure*. Retrieved from pmfias.com.

These proposals aimed to **reduce executive arbitrariness**, enhance **legislative efficiency**, and reinforce **democratic accountability**.

5.3 Punchhi Commission (2010): Structural Safeguards and Federal Balance

The **Punchhi Commission**, chaired by Justice Madan Mohan Punchhi, was tasked with reviewing Centre-State relations in the context of evolving political dynamics. It built upon earlier recommendations and introduced **structural reforms** to insulate the Governor's office from political pressures.

Notable recommendations included:

- **Impeachment Mechanism:** Governors should be removable only through a resolution passed by the State Legislature, akin to the President's impeachment process⁴⁷.
- **Appointment Panel:** A collegium comprising the Prime Minister, Home Minister, Speaker of Lok Sabha, and Chief Minister should select Governors to ensure bipartisan consensus⁴⁸.
- **Time Limits for Assent:** The Governor should decide on bills within six months, and the President should act on reserved bills within a similar timeframe⁴⁹.
- **Discretionary Powers Narrowed:** Article 163(2) should be interpreted restrictively. Discretion must be exercised with reason, good faith, and caution⁵⁰.
- **University Governance:** Governors should not serve as Chancellors of state universities to avoid politicization of academic institutions⁵¹.

The Punchhi Commission also emphasized the need for **judicial review** of gubernatorial actions and proposed that the President seek the Supreme Court's opinion under Article 143 when in doubt about a reserved bill's constitutionality⁵².

5.4 Judicial Endorsements and Evolving Norms

Several Supreme Court judgments have echoed the concerns raised by these commissions:

- In *S.R. Bommai v. Union of India* (1994), the Court held that the Governor's report recommending President's Rule must be based on objective material and subject to judicial review⁵³.
- In *Rameshwar Prasad v. Union of India* (2006), the Court invalidated the dissolution of the Bihar Assembly, reinforcing that Governors are not political actors⁵⁴.
- In *NabamRebia v. Deputy Speaker* (2016), the Court ruled that the Governor cannot summon the Assembly without the advice of the Council of Ministers⁵⁵.
- In *R (Miller) v. Prime Minister* (UK, 2019), the UK Supreme Court held that prorogation of Parliament must not frustrate constitutional functions, a principle increasingly relevant to India's federal structure⁵⁶.

These rulings underscore the judiciary's role in **preserving constitutional balance** and **curbing executive overreach**.

⁴⁷Punchhi Commission Report. (2010). *Centre-State Relations*. Government of India.

⁴⁸TheLawmatics. (2025). *Punchhi Commission on Governor's Role*. Retrieved from thelawmatics.in.

⁴⁹TheLawmatics. (2025). *Punchhi Commission on Governor's Role*. Retrieved from thelawmatics.in.

⁵⁰TheLawmatics. (2025). *Punchhi Commission on Governor's Role*. Retrieved from thelawmatics.in.

⁵¹Drishti IAS. (2025). *Governor's Role: Challenges and Reform Proposals*. Retrieved from drishtiias.com.

⁵²Punchhi Commission Report. (2010). Chapter IV.

⁵³*S.R. Bommai v. Union of India*, (1994) AIR 1918 SC.

⁵⁴*Rameshwar Prasad v. Union of India*, (2006) 2 SCC 1.

⁵⁵*NabamRebia v. Deputy Speaker*, (2016) 8 SCC 1.

⁵⁶*R (Miller) v. Prime Minister*, [2019] UKSC 41.

5.5 Towards a Reformed Constitutional Architecture

The cumulative wisdom of the Sarkaria, NCRWC, and Punchhi Commissions reveals a consistent theme: the need to **clarify, codify, and constrain** the discretionary powers of the Governor. While the Constitution envisages the Governor as a neutral constitutional authority, political realities have often distorted this vision.

Reform proposals—ranging from **appointment mechanisms** and **time-bound decision-making** to **judicial oversight** and **role delimitation**—offer a roadmap for restoring the Governor's office to its intended role. Implementing these recommendations would not only strengthen **cooperative federalism** but also uphold the **democratic integrity** of India's constitutional framework.

6. International Treaties and Federal Norms

The interface between international treaties and domestic constitutional norms presents a nuanced challenge in federal democracies. In India, while the Governor's role is largely confined to state-level constitutional functions, the implications of international obligations—especially those requiring legislative or executive action at the state level—can indirectly shape gubernatorial discretion. This section explores how international treaties influence federal norms, the constitutional framework governing treaty implementation, and comparative insights from other jurisdictions.

6.1 Treaty-Making Power in India: Constitutional Framework

India's Constitution vests the power to enter into international treaties with the Union Government. Article 253 empowers Parliament to legislate on any subject—even those in the State List—if required to implement an international treaty, agreement, or convention⁵⁷. This provision overrides the usual distribution of legislative powers under Article 246, reinforcing the primacy of international obligations.

The Governor, as the constitutional head of the state, may become relevant in two scenarios:

- When assenting to state legislation that potentially conflicts with international obligations.
- When reserving bills for Presidential consideration under Article 200, especially if the bill touches upon treaty-related matters.

In such cases, the Governor's discretion must align with India's international commitments and constitutional morality.

6.2 Vienna Convention and Customary International Law

Although India has not ratified the **Vienna Convention on the Law of Treaties (1969)**, its principles are recognized as customary international law by Indian courts⁵⁸. Key doctrines include:

- **Pactasuntservanda**: Treaties must be honored in good faith.
- **Supremacy of international obligations**: Domestic law must not defeat treaty commitments.

These principles indirectly influence gubernatorial discretion. For instance, if a state bill contradicts a ratified treaty, the Governor may reserve it for Presidential assent, citing potential international repercussions.

6.3 Judicial Interpretation and Federal Norms

Indian courts have consistently upheld the supremacy of international obligations over state autonomy in treaty-related matters. In *Maganbhai Ishwarbhai Patel v. Union of India* (1969),

⁵⁷ Constitution of India. (2020). Article 253. Retrieved from en.wikisource.org

⁵⁸ *Vishaka v. State of Rajasthan*, AIR 1997 SC 3011.

the Supreme Court held that Parliament could legislate on state subjects to implement treaties, and such laws would prevail over state legislation⁵⁹.

In *Vishaka v. State of Rajasthan* (1997), the Court used international conventions (CEDAW) to interpret fundamental rights under Articles 14 and 21, reinforcing the idea that international norms can guide domestic governance⁶⁰.

These rulings imply that Governors must exercise discretion in a manner that respects India's treaty obligations and judicial precedents.

6.4 Commonwealth Norms and Democratic Standards

India's membership in the **Commonwealth of Nations** entails adherence to shared values outlined in the **Commonwealth Charter (2013)**, including:

- Democracy and Rule of Law
- Good Governance
- Respect for Human Rights
- Separation of Powers⁶¹

While not legally binding, these norms serve as soft law benchmarks. A Governor's conduct—especially in politically sensitive situations like government formation or bill reservation—must reflect these principles to uphold India's international image and democratic commitments.

6.5 Comparative Insights: Sub-National Compliance

In federations like **Germany** and **South Africa**, sub-national units are constitutionally obligated to comply with international treaties ratified by the central government. For example:

- **Germany:** Länder must implement EU directives, even if they affect regional competencies⁶².
- **South Africa:** Provinces must align with national treaty obligations under Section 231 of the Constitution⁶³.

India lacks such explicit provisions, but judicial interpretation and Article 253 fill the gap. Governors, as constitutional heads, must ensure that state actions do not undermine India's treaty compliance.

6.6 Challenges in Harmonizing Federal Norms

Despite constitutional safeguards, tensions persist between federal autonomy and international obligations. Governors may face dilemmas when:

- State legislation conflicts with treaty norms.
- Political pressures influence discretionary decisions.
- Lack of clarity on the scope of Article 200 and 253 creates interpretive ambiguity.

These challenges are compounded when Governors delay assent to bills that may have international implications, risking diplomatic fallout or judicial intervention.

6.7 Recommendations for Constitutional Alignment

To address these challenges, the following reforms are proposed:

- **Codify guidelines** for reserving bills that may affect international treaties.
- **Mandate consultation** with the Ministry of External Affairs before assenting to such bills.
- **Train Governors** on international law and treaty obligations to enhance informed discretion.

⁵⁹ *Maganbhai Shwarbhai Patel v. Union of India*, (1969) 3 SCR 254.

⁶⁰ *Vishaka v. State of Rajasthan*, AIR 1997 SC 3011.

⁶¹ Commonwealth Charter. (2013). Retrieved from thecommonwealth.org.

⁶² German Basic Law, Article 23. See also Craig, P. (2012). *EU Administrative Law*. Oxford University Press.

⁶³ Constitution of South Africa, Section 231. Retrieved from lawglobalhub.com.

- **Amend Articles 200 and 201** to prescribe timelines for assent and reservation, especially in treaty-sensitive contexts.

These measures would harmonize federal norms with global commitments, ensuring that gubernatorial discretion remains constitutionally and diplomatically sound.

6.8 Aligning Discretion with Global Responsibility

In an increasingly interconnected world, the exercise of discretionary powers by Governors cannot remain insulated from international norms and treaty obligations. While the Constitution provides mechanisms to reconcile federal autonomy with global commitments, the onus lies on constitutional authorities to act with foresight, neutrality, and respect for India's international stature.

By aligning gubernatorial discretion with judicial standards, Commonwealth values, and treaty principles, India can reinforce its commitment to cooperative federalism and responsible global citizenship.

7. Conclusion — Reimagining the Governor's Role

The role of the Governor in India's federal architecture occupies a uniquely paradoxical space: envisioned as a constitutional guardian, yet often embroiled in the politics of the day. While the Constitution delineates the Governor's powers with the assumption of restraint and neutrality, real-world application has frequently deviated from this ideal. The tension between ceremonial symbolism and executive discretion has been magnified in recent decades, exposing vulnerabilities in institutional design, interpretive clarity, and systemic accountability.

India's quasi-federal structure grants considerable autonomy to states, yet the office of the Governor remains centrally appointed and constitutionally situated as an interface between Union and State. In theory, the Governor acts on the advice of the Council of Ministers, except in specific circumstances requiring discretion. In practice, the discretionary space has expanded, sometimes beyond constitutional intent, creating friction between elected governments and gubernatorial decisions. Incidents involving delayed legislative assent, unilateral summoning of assemblies, and opaque actions regarding government formation have triggered judicial review and calls for structural reform.

Insights from comparative democracies underscore the advantages of codified conventions and strict limits on sub-national executive powers. In Australia and Canada, constitutional crises led to reforms that significantly curtailed the scope of reserve powers. South Africa's constitution offers a clearer separation of ceremonial and executive authority at the provincial level. These global models suggest that ambiguity is often the precursor to politicization—and that precision in law is the antidote.

In India, three major commissions—the Sarkaria, NCRWC, and Punchhi—have produced a wealth of recommendations aimed at recalibrating the Governor's role. They converge on several key propositions: the need for transparent appointment mechanisms, fixed tenures insulated from political interference, time-bound procedures for legislative assent, the exclusion of Governors from academic governance roles, and the judicial reviewability of discretionary acts. Despite the consistent nature of these recommendations, substantive constitutional amendments remain pending, and political consensus has proved elusive.

Judicial interpretations have also played a pivotal role in narrowing the field of gubernatorial discretion. Landmark judgments have consistently emphasized the primacy of floor tests, ministerial advice, and objective material as prerequisites for the exercise of discretion. Courts have further clarified that the Governor is bound not only by constitutional provisions but also by democratic principles embedded in India's constitutional ethos.

Looking ahead, there is a pressing need to re-imagine the Governor's role with an emphasis on clarity, accountability, and fidelity to democratic values. Reform efforts must focus on codifying discretionary parameters, establishing consultative appointment mechanisms, ensuring impartiality in university governance, and defining procedural timelines to mitigate delays. Training programs designed to familiarize Governors with evolving constitutional jurisprudence and global federal norms would further enhance the quality of decision-making.

More fundamentally, this re-imagination must be rooted in a shift in constitutional culture—one that views the Governor not as a counterweight to the state government but as a facilitator of institutional equilibrium. When exercised within well-defined limits, the Governor's role can reinforce checks and balances. When left unchecked, it risks destabilizing democratic processes and eroding public trust.

India's constitutional journey has been marked by adaptation and evolution. Reimagining the Governor's role represents a continuation of that journey—a necessary step toward harmonizing federal ideals with contemporary governance realities. As legislative and judicial institutions move to strengthen accountability, the office of the Governor must evolve into a symbol not of political maneuvering, but of constitutional stewardship.