

Governor immunity from criminal prosecution

Why in news?

Recently West Bengal Governor instructed Raj Bhavan staff to ignore any communication from Kolkata Police in connection with the sexual harassment complaint filed against him.

What does the Constitution say about criminal prosecution against Governor?

- **Article 361**- The President or the Governor is not answerable to any court the exercise and performance of the powers and duties of office.
- **Criminal proceedings**- The article says that no criminal proceedings shall be instituted or continued against the President or the Governor in any court during his term office.
- **No process to Arrest/ imprisonment**- The article ensures that no process for the arrest or imprisonment of the President or Governor shall be issued from any court during his term of office.
- **Civil proceedings**- It can be initiated against President and Governor for their personal acts after a notice period of 2 months.
- **Duration of immunity**- The immunity provided by Article 361 is limited to duration of their in office, once their term expires or they resign from their position, they can be subject to legal proceedings like any other citizen.
- **Balance of powers**- The article reflects the framers' intention to maintain a balance of powers between the executive, judiciary, and legislative branches of government.
- **Prevent interferences**- By providing immunity to certain constitutional officeholders, it aims to prevent undue interference or harassment that could impede the functioning of these offices.

What is the Supreme Court's stand on Article 361?

- **Rameshwar Prasad vs Union of India, 2006**- The Supreme Court held that the Governor enjoys complete immunity under Article 361 of Constitution.
- **Immunity from legal proceedings**- The Supreme Court has affirmed that Article 361 provides immunity to the President, Governors and Rajpramukhs from legal proceedings during their term in office.
- **Actions beyond immunity**-If a President, Governor, or Rajpramukh engages in actions beyond the scope of their constitutional authority, they may still be subject to legal proceedings.
- **Unconstitutionality**-If there is evidence to suggest that an official has acted with improper motives or has violated the Constitution, courts have the authority to intervene and ensure accountability.
- **Nebam Rebia and Bamang Felix vs Deputy Speaker, 2016**- The Court reaffirmed that the discretionary power of the Governor are subject to judicial review.

- **Recording statement-** Madhya Pradesh High Court held that the immunity under Article 361 does not extend to recording of statement of the Head of a State by the police in connection with investigation of a crime, if it is so essential.
- **Defensive role of government-** The Supreme Court has recognized that the government can defend the actions of the President, Governors, or Rajpramukhs before a judicial forum.
- However, the government must provide valid justifications and refer to the material on record to support its defense.

Quick facts

Constitutional provisions of Governor

- **Part VI-** It deals with the government in the states.
- **Office of Governor-** It is a feature borrowed from *Government of India Act, 1935*.
- **Articles-** *Article 153 to 167* in Part VI of the Constitution deal with the state executive.
- **State executive-** It consists of the governor, the chief minister, the council of ministers and the advocate general of the state.
- **Chief executive head-** The governor is the chief executive head of the state. But, like the president, he is a nominal executive head (titular or constitutional head).
- **Agent to centre-** The governor acts as an agent of the central government.
- **7th Amendment Act, 1956-** It facilitated the appointment of the same person as a governor for two or more states

References

1. [The Hindu- Governor's immunity from criminal prosecution](#)
2. [Indian Express- Article 361 provides immunity](#)