



NEW LAW IN U.P. TO RECOVER COSTS FOR DAMAGING PROPERTY

Focus: GS-II Governance

Why in news?

- The Uttar Pradesh government on 15th March 2020, notified the 'Uttar Pradesh Recovery of Damage to Public and Private Property Ordinance', 2020, promulgated by the Governor - which is a stringent new law to recover compensation from those who damage public and private property during protests and riots.
- Claims for compensation will be decided by designated 'Claims Tribunals' that will be authorised to investigate complaints and assess the damage.

What is an Ordinance?

- An ordinance is a law that is promulgated by the President of India only when the Indian parliament is not in session. President promulgates an ordinance on the recommendation of the union cabinet.
- Similarly, Governor of Indian states can also initiate ordinances only when a legislative assembly is not in session when it is a unicameral legislature and when legislative assembly along with legislative council both are not in session when it is the bicameral legislature.

Powers of the Governor



Legislative Powers

1. The Constitution confers upon the Governor the power to nominate one member to the Lower House and some members to the Upper House of the State. He can nominate one member from the Anglo-Indian community to the State Legislative Assembly, if in his opinion this community is not adequately represented in that House. In a State with a Legislative Council, the Governor nominates one-sixth of the total number of its members.
2. The Governor can summon the State Legislature, prorogue either House or dissolve the Legislative Assembly.
3. The Constitution gives the Governor the right to address the House or Houses of the state Legislature separately or jointly. At the beginning of each new session and immediately after a general election to the Assembly, he has to deliver an address to the Legislature in which he lays down the policy of his Government for ensuing year.
4. The Governor can also send messages to any House of the State Legislature. The Constitution lay down that a House to which any message is so sent shall consider any matter required by the message to be taken into consideration.
5. Every Bill passed by the State Legislature has to receive the Governor's assent before it can become a law. The Governor has three alternatives before him with respect to such a Bill:
 - a. he can give his assent to the Bill; or
 - b. withholds assent; or
 - c. he may reserve the Bill for the consideration of the President; or
 - d. he can return it to the Legislature, if it is not a Money Bill, for reconsideration, suggesting alterations and modifications in part or in the whole. But such Bills when passed again by the Legislature must receive the assent of the Governor, which means that the Governor cannot withhold his assent to a bill if it is passed a second time by the State Legislature (Article 200).
6. The annual reports of various bodies like State Public Service Commission (Article 323), State Finance Commission, he may decide a matter relating to the disqualification of a member of the Legislature if that member's election is challenged through a petition by some voter of his State (Article 192).



Ordinance making power of the Governor (Article 213)

- He can **issue an Ordinance when one or both Houses of the State Legislature are not in session**, having the force of a law.
- The Governor is authorized to promulgate Ordinance when is satisfied that circumstances exist which render it necessary for him to take action immediately.
- However, the Governor is prohibited from promulgating Ordinances that contain provision, which under the Constitution require the previous sanction of the President for introduction in the State Legislature or which are to be reserved for the assent of the President.
- In such cases, the Governor can promulgate an Ordinance after obtaining permission from the President.
- **An Ordinance issued by the Governor ceases to be in operation six months and six weeks, as is to the ordinance issued by the President. The Governor may withdraw an Ordinance any time before it expires.**

Financial Powers

1. No Money Bill and Financial Bill can be introduced in the State Legislative except on Governor's recommendation.
2. No demand for a grant can be made in the Legislative Assembly except on his recommendation.
3. It is the duty of the Governor to get prepared and introduced in the State Legislature the annual budget showing the estimated revenue and expenditure of the State for that year and, if necessary, the supplementary budget for the State.
4. The Governor can also make advances out of the Contingency Fund of the State in case of unforeseen expenditure, pending its authorization by the Legislature.
5. He constitutes a Finance commission after every five years to review the financial position of the Panchayats and the municipalities.



Judicial Powers

1. Pardoning Power (Art. 161):

Under Article 161, the Governor can grant pardons, reprieves, respites and remission of punishment or suspend, remit and commute the sentence of any person convicted of any offence, against any law relating to a matter to which the executive power of the state extends. However, the pardoning power of the Governor differs from that of the President in the manner that the President can pardon death sentence whereas the governor is deprived of this pardoning power. The Governor does not have the power that could empower him to par-don sentences inflicted by court martial as this power is entitled only to the President of India.

2. Judicial Appointments: The

Governor is consulted by the President, the Governor of the State appoints the judges of the concerned State High Court. And with the consultation of the State High Court, he makes appointments, State High Court and the State High Court and the State Public Service Commission he appoints persons to the judicial service of the state other than the district judges.

Emergency Powers

- The Governor has the power to make a report to the President, whenever he is satisfied that a situation has arisen in which Government of the State cannot be carried on in accordance with the provisions of the Constitution (Article 356), thereby, inviting the President to assume to himself the functions of the Government of the State or any of them.
- When the President's rule is imposed in a State, an important change in the position of the Governor takes place.
- Instead of being a constitutional head of the State, who is guided by his Council of Ministers in the discharge of his duties, he becomes the "agent of the Union Government in the State".
- He takes over the reins of administration directly into his own hands and runs the State with the aid of the civil services.



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- Thus, during the period of emergency, the executive power of the State is exercised by the Governor in accordance with the instructions received from the President.

Discretionary Powers of the Governor

- If any question arises whether any matter is a matter on which the Governor can use discretionary power, **the decision of the Governor is final.**
- The functions which are specially required by the Constitution to be exercised by the Governor in his discretion are:
 1. The Governor of a State as the administrator of an adjoining Union Territory can exercise his functions as such administrator, independently of his Council of Ministers.
 2. Some of the Governors may have to discharge certain special responsibilities also under the articles 371 to 371 J. In the discharge of such special responsibility, the Governor has to act according to the directions issued by the President from time to time, and subject, therefore, he is to act "in his discretion".

In such cases, the Governor shall seek the advice of his Council of Ministers, but he is **not** bound by the advice tendered by his Council of Ministers