

(2) for clause 3, the following clause shall be substituted, namely: —

“(3) No process for the arrest or imprisonment of the President shall issue from any court during his term of office.”

(3) for clause 4, the following clause shall be substituted, namely: —

“(4) No civil proceedings in which relief is claimed against the President, shall be instituted during his term of office in any court in respect of any act done or purporting to be done by him in his personal capacity, whether before or after he entered upon his office as President, until the expiration of two months next after notice in writing has been delivered to the President, or left at his office stating the nature of the proceedings, the cause of action therefor, the name, description and place of residence of the party by whom such proceedings are to be instituted and the relief which he claims.”

(4) after clause 4, the following new clause shall be inserted, namely: —

“(5) No criminal proceeding shall be instituted or continued against the Governor of a State, in any court during his term of office for any act done by him in the discharge of his public duty or functions.”

STATEMENT OF OBJECTS AND REASONS

The Constitution of India states that the executive power of the State vests in the Governor. The Governor being a nominal head of the State is bound by the aid and advice of the Council of Ministers of the State. The Governor is appointed by the President of India, on the recommendations of the Union Cabinet. The Governor serves at the pleasure of the President. The Governor is therefore an unelected figurehead of the State Government.

Article 361 confers immunity from civil and criminal prosecution on the President and the Governor. The treatment of the Governor on par with the President of India is fallacious since the President of India is elected by an electoral college comprising elected representatives of the Houses of Parliament and the Legislatures of the States. Therefore, the President is a democratically elected head of the Union, whereas the Governor is a mere appointee. In fact, Article 157 only prescribes the most basic qualifications for appointment as Governor. Thus, equating the President and the Governor in matters of immunity is undesirable.

That apart, the Governor is bound by the aid and advice of the Council of Ministers of the State. The Chief Minister of the State does not enjoy complete immunity from prosecution. He can be prosecuted after obtaining sanction. Similarly, there should be a provision to prosecute the Governor for criminal offences after obtaining the sanction of the President, who appoints him. The Chief Minister of a State does not enjoy any immunity from civil proceedings. There is no reason why a Governor should get immunity from civil prosecution for civil wrongs or damages caused by him. Thus, it is undesirable to place the Governor at a better position than the democratically elected Chief Minister of the State, who enjoys the confidence of the Legislature of the State.

Allegations of corruption, sexual offences, inciting violence etc. have been made against some Governors. The idea that a person, howsoever high, be beyond the reach of Courts and the justice administration system is a colonial relic and cannot be part of a democracy administered by a written Constitution and the rule of law. If Governors misuse their office to provoke breach of peace or act against public interest, they must face the legal consequences.

The immunity under Article 361(1) to the Governor from answering to any court for the exercise and performance of his official duties is sufficient protection to ensure that a Governor does not answer cases filed against his official decisions personally. However, the immunity need not extend to criminal offences or civil wrongs committed by a Governor in his personal capacity. Absolute immunity to an unelected figure is antithetical to our constitutional morality and basic structure.

It is therefore, proposed to amend article 361 to achieve the above objectives.

Hence, this Bill.

P. WILSON

ANNEXURE

EXTRACTS FROM THE CONSTITUTION OF INDIA

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361. (1) The President, or the Governor or Rajpramukh of a State, shall not be answerable to any court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties:

Protection of President
and Governors and
Rajpramukhs.

Provided that the conduct of the President may be brought under review by any court, tribunal or body appointed or designated by either House of Parliament for the investigation of a charge under article 61:

Provided further that nothing in this clause shall be construed as restricting the right of any person to bring appropriate proceedings against the Government of India or the Government of a State.

(2) No criminal proceedings whatsoever shall be instituted or continued against the President, or the Governor of a State, in any court during his term of office.

(3) No process for the arrest or imprisonment of the President, or the Governor of a State, shall issue from any court during his term of office.

(4) No civil proceedings in which relief is claimed against the President, or the Governor of a State, shall be instituted during his term of office in any court in respect of any act done or purporting to be done by him in his personal capacity, whether before or after he entered upon his office as President, or as Governor of such State, until the expiration of two months next after notice in writing has been delivered to the President or the Governor, as the case may be, or left at his office stating the nature of the proceedings, the cause of action therefor, the name, description and place of residence of the party by whom such proceedings are to be instituted and the relief which he claims.

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RAJYA SABHA

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BILL

further to amend the Constitution of India.

(Shri P. Wilson, M.P.)