



KTU NOTES

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**KTU STUDY MATERIALS | SYLLABUS | LIVE
NOTIFICATIONS | SOLVED QUESTION PAPERS**

MODULE IV

SYLLABUS

- The state executive, the Governor, the council of ministers, the chief minister, advocate general, union territories
- The state legislature, composition, qualification and disqualification of membership, functions
- The state judiciary, The high court, jurisdiction, writs jurisdiction

✓ STATE EXECUTIVE

The State Executive consists of the Chief Minister, the Council of Ministers and the Governor. It has the same Parliamentary pattern as followed by the Union Government with the upper hand being given to the Union in certain matters. This has been done to maintain the unitary spirit of the structure of the country. The Governor plays the twofold role of being the constitutional head at the state level as well as being a link between the state government and the centre. He acts on the advice of the Council of Ministers and all executive actions are taken in his name.

◆ The Governor

Article 153 of the Indian Constitution provides for every State to have a Governor. Just like the President is the nominal head of the republic, the Governor is the nominal head of a state. This means that he has powers and functions similar to the President of India but operates at the state level, with the real power lying in the hands of the State Chief Minister and his council of ministers. Further, the 7th Constitution Amendment Act of 1956 has added a provision under Article 153 which provides for the same person to act as the Governor of two states simultaneously. The term of office of the Governor is 5 years.

Appointment, Tenure and Removal of a Governor

Appointment of a Governor is talked about under Article 155 and information regarding his tenure and removal are provided under Article 156. It states that the President appoints the Governor by warrant under his hand and seal i.e., bearing his seal and signature. The Governor shall hold office as long as he enjoys the pleasure of the President. The Governor may resign his office by writing under his hand i.e., a written letter undersigned by him addressed to the President. In accordance with the foregoing provisions of this article, the Governor's term of office shall be five years from the date on which he enters upon his office, provided that the Governor shall continue to hold office until his successor enters upon his office, notwithstanding the expiration of his term.

Qualifications

Article 157 states the two qualifications to be fulfilled for a person to be appointed Governor. The two provisions are:

- He should be an Indian citizen.
- He should have completed 35 years of age.

Conditions of Governor's Office

Along with the above mentioned preliminary qualifications, there are a set of other criteria which need to be met. These are stated under Article 158. They are:

- He should not be holding any office of profit.
- He should not be a member of the Parliament or any other State Legislature. However, if someone holding these positions is appointed Governor, he/she would have to vacate their previously held office.
- He is provided with such allowances, emoluments and privileges which the Parliament provides by law and in case these provisions are absent, they are provided to him/her as per Schedule II.
- The above mentioned allowances, emoluments and privileges would not be diminished during his term. Further, if two states come under him/her, such expenses would be shared between them in accordance with the President's decision.

Oath

Every Governor, before entering his office is bound to take an oath before the Chief Justice of the High Court or the senior most judge, in the former's absence. This is mentioned under Article 159.

As per Articles 155 & 156 of the Constitution, the Governor is an appointee of the President and holds office as long as he continues to enjoy his pleasure. This essentially means that the Governor can hold his office for the prescribed term of 5 years if he continues to enjoy the pleasure of the President. Article 74 states that the President is bound to act upon the aid and advice of the Council of Ministers. Therefore, the President's decision to remove the Governor, in effect, is actually the decision of the Centre.

Powers of Governors

The position, power and functions of the Governor are analogous to that of the President. His powers are discussed below under four heads.

Executive power

Under Article 154(1), the executive powers have been vested to the Governor and he can choose to exercise them either directly himself or indirectly through his Council of ministers.

- As such, the Governor makes important appointments of the state such as the Chief Minister and Council of Ministers, Chairman and members of State Public Service Commission, State election commissioner, Advocate General, District judges and the Vice chancellors of Universities.

- Under Article 356, the Governor can recommend the President for the imposition of a State Emergency and during such emergency he/she enjoys extensive executive powers as an agent of the President.
- He runs the state administration by extending control over the subjects in the state list and deciding the policies and portfolios of the various ministers.

Financial power

- A money bill cannot be introduced in the state legislature without prior approval of the Governor.
- The state Contingency Fund is at his disposal and he can make withdrawals out of it to meet unforeseen expenditures.
- He makes sure that the Annual state budget is discussed and put before the State Legislature.

Legislative power

- The Governor has the power to summon and prorogue both houses of the Legislature. He has to make sure that the maximum gap between the two sessions of the houses is 6 months.
- Under Article 192, the Governor has the authority to disqualify any legislator who fails to comply with the conditions given under Article 191.
- The Governor has to address the state legislature at the beginning of the first session every year and after the state assembly elections.
- The Governor can hold a bill and send it to the President for his consideration. Other than this, the Governor can either give assent to a bill or withhold it or send it back for reconsideration (except for money bills).

Pardoning power

According to Article 161, the Governor can grant pardons, reprieves, respites and remissions of punishment or suspend, remit and commute the sentence of any person convicted of any offence relating to matters under the state executive power, exception being cases decided by a court martial. However, in cases where a death penalty has been granted the Governor cannot pardon it.

❖ The Council of Ministers

The Council of Ministers is appointed by the Governor. It along with the Chief Minister exercises the real power and implements policies and rules in the State. Hence, together they form the executive head of the State.

Maximum size of ministries

The total number of Ministers, including the Chief Minister, in the Council of Ministers in a State shall not exceed fifteen per cent of the total number of members of the Legislative Assembly of that State, provided that the number of ministers, including the Chief Minister in a State shall not be less than twelve; And that where the total number of Ministers including the Chief Minister in the Council of Ministers in any State at the commencement of the Constitution

(Ninety-first Amendment) Act, 2003 exceeds the said fifteen per cent then the total number of ministers in that State shall be confined to such number within six months from such date.

Relationship between the Governor and Council of Ministers

The relationship between the Governor and the Council of Ministers is analogous to that between the President and the Council of Ministers. Article 163 says that there shall be a Council of Ministers to aid and advise the Governor. These groups of ministers hold office during the pleasure of the Governor and are directly responsible to the Legislative Assembly. Under normal conditions, the Governor is bound by the advice and opinions of the Council of Ministers but there are certain circumstances under which the Governor functions according to his/her own discretion.

◆ Chief Minister

The Chief Minister is the most powerful functionary at the State Government level and is the executive head of the state. He is appointed by the Governor. Post the general elections, the party with the majority votes and elects its leader.

This person is then appointed as Chief Minister. In case, no particular party secures majority support, the Governor asks the leader of the single largest party to form the Government or in case of a coalition, the group's leader is appointed as Chief Minister.

Dismissal of a Minister

The ministers of a state hold office during the pleasure of the President. However, since the ministers are chosen by the Chief Minister, in practice it is the Chief Minister who decides whom to retain and whom to oust. Thus there are two provisions here:

- The Governor cannot dismiss a Minister against the advice of the Chief Minister.
- The Governor cannot retain a Minister against the wishes of the Chief Minister.

Powers of a Chief Minister

Being the leader of the ruling party of the state, the chief minister has been granted some powers by the Indian Constitution. Some of the powers of the Chief Ministers are as below:

1. Head of the Council of Ministers

The chief minister is the head of the council of Ministers. The ministers are appointed by the Governor on the advice of the Chief Minister and he also has a free hand in making a list of his colleagues. The Chief Minister can reconstruct his Ministry as and when the need arises.

He further has the right to demand the resignation of any of the ministers under him. The chief minister also controls the agenda for the Cabinet meetings. Furthermore, he supervises and coordinates policies of several Ministers and Departments.

2. Aids and Advises the Governor

He is the link between the Cabinet and the Governor. The decisions of the council of ministers are communicated to the governor by the Chief Minister. He also needs to furnish any information relating to the administration of the State as the Governor may call for.

3. Leader of the House

Being the leader of the house, he gets to make all the announcements concerning the new or amended policies. Maintaining discipline of the Members of his party also comes under his hat. Adding to this, the chief minister can appoint a whip whose directive must be obeyed by all the legislators.

❖ Advocate General

The Advocate General is the highest law officer in the state. He is responsible to assist the state government in all its legal matters. He defends and protects the interest of the state government. The office of the Advocate General in state corresponds to the office of Attorney General of India. He must be a person who is qualified to be appointed a judge of a high court.

The advocate general is appointed by the governor. The term of office of the advocate general is not fixed by the Constitution. He holds office during the pleasure of the governor. The remuneration of the advocate general is not fixed by the Constitution. He receives such remuneration as the governor may decide.

- 1) The Governor of each State shall appoint a person who is qualified to be appointed a Judge of a High Court to be Advocate-General for the State.
- (2) It shall be the duty of the Advocate-General to give advice to the Government of the State upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the Governor, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.
- (3) The Advocate-General shall hold office during the pleasure of the Governor, and shall receive such remuneration as the Governor may determine.

✓ STATE LEGISLATURE

The Constitution of India provides for a legislature in each State and entrusts it with the responsibility to make laws for the state. However, the composition of a state Legislature can be different in different states. It can be either bicameral or unicameral.

In case of a bicameral state legislature, the upper house is known as State Legislative Council (Vidhan Parishad) and the lower house as the State Legislative Assembly (Vidhan Sabha). Where there is only one House of the State Legislature, it is known as the State Legislative Assembly.

❖ Composition of the State Legislative Assembly (Vidhan Sabha):

The State Legislative Assembly, popularly known as Vidhan Sabha, is the lower, directly elected, popular and powerful house of the state legislature. Its membership is in proportion to the population of the state and hence it differs from state to state. The members are directly elected by the people of the state through a secret ballot, simple majority vote victory and single member territorial constituency system.

A citizen of India, who is not less than 25 years of age and who fulfills every other qualification as laid down by a law can become its member by winning an election from any constituency in the state. However, no person can simultaneously be a member of two Houses of the Parliament or of any other State Legislature.

The normal term of Legislative is 5 years. However, it can be dissolved by the Governor at any time. It can be suspended or dissolved when an emergency under Article 356 is proclaimed in the state.

Qualifications of Members of Legislative Assembly

A person shall not be qualified to be selected to occupy a seat in the Legislature of a State unless he

- (a) is an Indian citizen;
- (b) is 25 years or above for Legislative Assembly, and is 30 or above for Legislative Council, and
- (c) possess such other qualifications as may be prescribed by the Parliament.

Thus, the Representation of the People Act, 1951, has provided that a person shall not be elected either to the Legislative Assembly or the Council unless he is himself an elector for any Legislative Assembly constituency in that State. A person can be disqualified for being selected as and for being a member of the Legislative Assembly or Legislative Council of a State if he

(a) holds an office of profit under GOI or any State Government, other than that of a Minister at the centre or any state or an office declared by a law of the State not to disqualify its holder (many States have passed such laws declaring certain offices to be offices the holding of which does not disqualify its holder for being a member of the Legislature of that States)

(b) is mentally unsound as declared by a competent Court

(c) is an insolvent

(d) is not an Indian citizen or has voluntarily got the citizenship of a foreign State or is under any acknowledgement of adherence/allegiance to a foreign nation

(e) is so disqualified by or under any law made by Parliament

Thus, the Representation of the People Act, 1951, has laid down some grounds of disqualification, like conviction by a Court, having been found guilty of electoral malpractice, being a manager or director of a corporation in which Government possesses a financial interest. Article 192 says that if any question arises as to whether a member of a House of the Legislature of a State has become subject to any of the disqualifications mentioned above, the matter will be referred to the Governor of the state who has to act in accordance with the opinion of the Election Commission. His decision is final and not liable to be questioned in Court.

❖ **Legislative Council**

The Legislative Council of a State Comprises not more than one-third of the total number of members in the Legislative Assembly of the State and in no case less than 40 members. The system of the composition of the Council as provided for in the Constitution is not final. The final power is given to the Parliament of the Union.

❖ **Method of Abolition or Creation of a State Legislative Council:**

The power to establish or abolish the Legislative Council in a state belongs to the Union Parliament. It can do it by enacting a law. The Parliament, however, acts when the Legislative Assembly of the concerned state passes a desired resolution by a majority of its total membership and by a majority of not less than two-thirds of the members of the State Legislative Assembly present and voting.

Duration of Legislative Assembly & Legislative Council

It will be a partly nominated and partly elected body, the election being an indirect one and in accordance with the principle of proportional representation by the single transferable vote. The members being drawn from various sources, the Council shall have a variegated composition. Broadly speaking 5/6 of the total number of members of the Council shall be indirectly elected and 1/6 will be nominated.

The duration of the Legislative Assembly is five years. The Governor has the power to dissolve the Assembly even before the expiry of its term. The period of five years, may, while a proclamation of emergency is in operation, be extended by the Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after proclamation has ceased to operate (Article 172(1)). Unlike the Legislative Assembly, the Legislative Council is not subject to dissolution. It is a permanent body unless abolished by the Legislative Assembly and Parliament by the due procedure. But no person can be a permanent member of the Council as one-third of the members of the Council retire on the expiry of every second year. It amounts to a term of six years for each member. There is no bar on a member getting re-elected on the expiry of his term.

(a) One-third of the total number of members of the Council would be elected by electorates consisting of members of local bodies like the municipalities and the district boards.

(b) one-twelfth of the members would be elected by electorates comprising of graduates of the standing of three years dwelling in that particular state.

(c) One-twelfth of the members would be elected by electorates consisting of teachers who have been in the teaching profession for at least 3 years in educational institutes in that state, which are not lower than secondary schools in the standard.

(d) One-third would be elected by members of the Legislative Assembly from amongst people who are not Assembly members.

(e) The rest would be nominated by the Governor from persons having knowledge or practical experience in matters like science, literature, cooperative movement, art and social service.

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A person shall not be qualified to be selected to occupy a seat in the Legislature of a State unless he

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Thus, the Representation of the People Act, 1951, has provided that a person shall not be elected either to the Legislative Assembly or the Council unless he is himself an elector for any Legislative Assembly constituency in that State.

A person can be disqualified for being selected as and for being a member of the Legislative Assembly or Legislative Council of a State if he/she

(a) holds an office of profit under GOI or any State Government, other than that of a Minister at the centre or any state or an office declared by a law of the State not to disqualify its holder (many States have passed such laws declaring certain offices to be offices the holding of which does not disqualify its holder for being a member of the Legislature of that States)

(b) is mentally unsound as declared by a competent Court

(c) is an insolvent

(d) is not an Indian citizen or has voluntarily got the citizenship of a foreign State or is under any acknowledgement of adherence/allegiance to a foreign nation

(e) is so disqualified by or under any law made by Parliament

Powers of Legislative Assembly

The five powers of the state legislative assembly are as follows:

1. Legislative Powers
2. Financial Powers
3. Control over the Executive
4. Amendment Powers
5. Electoral Functions.

1. Legislative Powers

The State Legislature has got the power of making laws on the subjects of the State List and the Concurrent List. In this connection the real law-making powers are in the hands of the Legislative Assembly. Ordinary bills can be introduced in either of the two Houses and these become laws only when passed by the two Houses and signed by the Governor.

However, in practice, almost 95% bills are first introduced in the Legislative Assembly and these go to the Legislative Council after these get passed by the Legislative Assembly.

2. Financial Powers

The Legislative Assembly controls the finances of the State. A Money Bill originates only in it.

3. Control over the Executive

The Legislative Assembly controls the State Council of Ministers. The Chief Minister is the leader of the majority party in the Legislative Assembly. He and most of the other ministers are taken from among its members of the Legislative Assembly.

They are collectively responsible before the Legislative Assembly. The State Council of Ministers can remain in office so long as it enjoys the confidence of the majority in the Legislative Assembly. The Legislative Assembly control the ministry through several methods like call-attention motions, putting of adjournment motions, questions, censure motion, no-confidence motions etc.

4. Amendment Powers

The State Legislative Assembly enjoys a role with regard to the amendment of the Indian Constitution. Some parts of the Constitution can be amended by the Union Parliament only when half of the State legislatures ratify the amendment. If the Parliament is to amend the Constitution for the purpose of altering the boundary of a State, the opinion of the concerned State Legislative Assembly is also sought before the moving of such a bill in the Parliament.

5. Electoral Functions

The State Legislative Assembly elects its own Speaker and Deputy Speaker. It can also remove either of them through a vote of no- confidence. Elected members of the State Legislative Assembly take part in the election of the President of India. One-third of the members of the Legislative Council of the State are also elected by the State Legislative Assembly.

✓ STATE JUDICIARY

The High Courts of India are the principal civil courts of original jurisdiction. There are present in most states. In the case of small states, a high court is present for 2 to 3 states. Their territory is merged and is under the jurisdiction of one high court. This is why we have 29 states but we only have 25 high courts.

In the judicial organisation of every state, the High Court is the apex body. Below the High Court, there are other courts which constitute the subordinate judiciary. These Subordinate Courts are of two types, namely, Civil and Criminal. The disputes relating to property, succession, ownership and other such rights come under the jurisdiction of Civil Courts, which dispose of these cases in accordance with the Civil Procedure Code. The Criminal cases related to murder, robbery, arson, cheating, assault and rape etc. These cases are disposed of by the Criminal Courts in accordance with the Criminal Procedure Code and Indian Penal Code. Both the Civil and Criminal Courts are graded into three each. The gradation of these courts is related to the nature of the dispute, the amount of property in case of Civil Courts and the nature of crime in case of Criminal Courts.

The first high court was the Calcutta. The Bombay and Madras High Court was established in the year of 1862. While there were 24 high courts, the number increased to 25 in 2019. This is due to the high court built in Amaravati. Delhi is the only Union Territory which has a separate high court.

Composition

The head of the High Court is the Chief Justice of the High Court. There is one Chief Justice. The number of judges is not fixed by the Constitution of India and leaves it up to the discretion of the president.

Qualifications To Become A High Court Judge

A judge of the High Court should be a:

- Citizen of India,
- Holding a judicial office for not less than 10 years in a territory of India,
- An advocate of the High Court for at least 10 years in succession.

Appointment Of Judges

The judges and the Chief Justice of the High Courts are appointed officially by the President.

The Chief Justice is appointed by the President in consultation with Chief Justice of India and Governor of the state which the High Courts jurisdiction falls under.

For the appointment of other judges of the High Court, they are appointed by the President on the advice of the Chief Justice of India, the governor of that state and the Chief Justice of the High Court.

Oath of Office

The Chief Justice of the High Courts and judges of the High Court take an oath before the Governor of state or some person appointed by him.

Thus while their appointment and removal are done by the President, they take an oath they take in front of the governor.

Term of Office

A judge of the High Court holds his office until he attains the age of 62. If he wants to resign, he can resign by writing to the president. He can also be removed by the President on the recommendation of the Parliament. A High Court judge after retirement can practice either in Supreme or High Court in which he has not served.

Process of Removal of Judges

A judge can be removed by the President on the recommendation of the Parliament on grounds of proved incapacity or misbehavior.

A motion to remove the judge of HC can be introduced in any house of parliament. It must be introduced by at least 100 members in Lok sabha or 50 members in Rajya Sabha whenever it is introduced.

The Speaker or Chairman may reject this proposal or set up a 3 member committee to investigate the concerns.

When the committee finds him guilty, then the motion has to be passed by both houses by a special majority. Then, the President gives his assent and Judge of HC is removed.

Jurisdiction of the High Court

Original Jurisdiction

Article 226 defines the powers of the high court. It gives the power to the High Court to issue writs. They have the power to issue orders or writs to 'any person, authority, or Government which falls within the territories under their jurisdiction to enforce the Fundamental Rights.

These writs are-

Habeas Corpus

It is a writ requiring a person under arrest of illegal detention to be brought before a judge or brought into court. This is especially to ensure that the person be released if lawful grounds for detention cannot be proved.

Mandamus

A writ issued as a command to an inferior court or ordering a person to perform their job or public or statutory duty.

The Supreme Court held that a writ of mandamus cannot be issued to legislate or amend a law.

Prohibition

This writ is issued as a command to prevent an inferior court or tribunal from exceeding its jurisdiction.

Quo Warranto

This writ is to inquire into the legality of the claim of a person or public office. It stops people from holding an office which they are not entitled to. This writ is applicable to the public offices only and not to private offices.

The Supreme Court held that the HC cannot issue Quo warranto unless it is based on indisputable facts.

Certiorari

This writ is passed to squash an order passed by an inferior court.

Appellate Jurisdiction

In civil cases, an appeal can be made against a district court's decision. They can also make an appeal directly from a subordinate court if the dispute has a value higher than Rs 5000, or if there is a substantial question of law.

For criminal cases, appeals can be made against the Session and Additional Session courts. This is if the sessional judge has given imprisonment for 7 years or more, or has awarded capital punishment.

They also have jurisdiction over cases relating to State and Center law. With regards to constitutional cases, the case must have a substantial question of law in order to be considered by the high court.

The relation between the Supreme Court and the High Court

SUPREME COURT

- The Supreme Court is the apex court of Justice.

- The Chief Justice of India heads it.
- Supreme Court has supreme power over all the courts in India.
- The Chief Justice of India is appointed by the President and the other judges of the Supreme Court are appointed by the President on the recommendation of the CJI.
- The judges of the Supreme Court retire at 65.
- The Supreme Court is the highest court of appeal and there is no other court above it.

HIGH COURT

- The High Court is the highest court of authority in the state its jurisdiction falls under.
- The Chief Justice of the High Court heads it.
- The High Court has supreme power over only the tribunal and other subordinate courts in its state.
- The Chief Justice of India is appointed by the President on the recommendation of Chief Justice of India and Governor of the state.
- The judges of the high court are appointed by the President of India after consulting the Chief Justice of India, the governor of that state and the Chief Justice of the High Court.
- The judges of the high court retire at 62.

- The judge of the high court can plead to the Supreme Court.
 - There is a total of 25 High Courts in India.
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