

UNIT III STATE ADMINISTRATION

Governor, Chief Minister, State Council of Ministers, State Legislature, Inter-State Relationships, State Judiciary - High court.

GOVERNOR

The governor is the chief executive head of the state. But, like the president, he is a nominal executive head (titular or constitutional head). The governor also acts as an agent of the central government. Therefore, the office of governor has a dual role.

APPOINTMENT OF GOVERNOR

The governor is neither directly elected by the people nor indirectly elected by a specially constituted electoral college as is the case with the president. He is appointed by the president by warrant under his hand and seal. In a way, he is a nominee of the Central government. But, as held by the Supreme Court in 1979, the office of governor of a state is not an employment under the Central government.

The Draft Constitution provided for the direct election of the governor on the basis of universal adult suffrage. But the Constituent Assembly opted for the present system of appointment of governor by the president because of the following reasons:

1. The direct election of the governor is incompatible with the parliamentary system established in the states.
2. The mode of direct election is more likely to create conflicts between the governor and the chief minister.
3. The governor being only a constitutional (nominal) head, there is no point in making elaborate arrangements for his election and spending huge amount of money.
4. The election of a governor would be entirely on personal issues. Hence, it is not in the national interest to involve a large number of voters in such an election.
5. An elected governor would naturally belong to a party and would not be a neutral person and an impartial head.

The Constitution lays down only two qualifications for the appointment of a person as a governor. These are: 1. He should be a citizen of India. 2. He should have completed the age of 35 years.

CONDITIONS OF GOVERNOR'S OFFICE

The Constitution lays down the following conditions for the the governor's office:

Note: For detailed discussion, it is recommended to refer "Indian Polity" by Lakshmikanth

1. He should not be a member of either House of Parliament or a House of the state legislature. If any such person is appointed as governor, he is deemed to have vacated his seat in that House on the date on which he enters upon his office as the governor.
2. He should not hold any other office of profit.
3. He is entitled without payment of rent to the use of his official residence (the Raj Bhavan).
4. He is entitled to such emoluments, allowances and privileges as may be determined by Parliament.
5. When the same person is appointed as the governor of two or more states, the emoluments and allowances payable to him are shared by the states in such proportion as determined by the president.
6. His emoluments and allowances cannot be diminished during his term of office.

In 2018, the Parliament has increased the salary of the governor from ₹1.10 lakh to ₹3.50 lakh per month.

*Before entering upon his office, the governor has to make and subscribe to an **oath or affirmation**. In his oath, the governor swears: (a) to faithfully execute the office; (b) to preserve, protect and defend the Constitution and the law; and (c) to devote himself to the service and well-being of the people of the state.*

*A governor holds **office for a term** of five years from the date on which he enters upon his office. However, this term of five years is subject to the pleasure of the President. Further, he can resign at any time by addressing a resignation letter to the President. The Supreme Court held that the pleasure of the President is not justifiable. The governor has no security of tenure and no fixed term of office. He may be removed by the President at any time.*

POWERS AND FUNCTIONS OF GOVERNOR

The powers and functions of the governor can be studied under the following heads: 1. Executive powers. 2. Legislative powers. 3. Financial powers. 4. Judicial powers. 3. He should be qualified for election as a member of the Lok Sabha.

CHIEF MINISTER

COMPOSITION AND APPOINTMENT

In the scheme of parliamentary system of government provided by the Constitution, the governor is the nominal executive authority (de jure

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executive) and the Chief Minister is the real executive authority (de facto executive). In other words, the governor is the head of the state while the Chief Minister is the head of the government. Thus the position of the Chief Minister at the state level is analogous to the position of prime minister at the Centre.

APPOINTMENT OF CHIEF MINISTER

The Constitution does not contain any specific procedure for the selection and appointment of the Chief Minister. Article 164 only says that the Chief Minister shall be appointed by the governor. However, this does not imply that the governor is free to appoint any one as the Chief Minister. In accordance with the conventions of the parliamentary system of government, the governor has to appoint the leader of the majority party in the state legislative assembly as the Chief Minister. But, when no party has a clear majority in the assembly, then the governor may exercise his personal discretion in the selection and appointment of the Chief Minister.

OATH, TERM AND SALARY

In his oath of office, the Chief Minister swears: 1. to bear true faith and allegiance to the Constitution of India, 2. to uphold the sovereignty and integrity of India, 3. to faithfully and conscientiously discharge the duties of his office, and 4. to do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or illwill.

POWERS AND FUNCTIONS OF CHIEF MINISTER

In Relation to Council of Ministers - In Relation to the Governor - In Relation to State Legislature - Other Powers and Functions.

STATE COUNCIL OF MINISTERS

The council of ministers headed by the chief minister is the real executive authority in the politico-administrative system of a state. The council of ministers in the states is constituted and function in the same way as the council of ministers at the Centre.

APPOINTMENT OF MINISTERS

The chief minister is appointed by the governor. The other ministers are appointed by the governor on the advice of the chief minister. This means that the governor can appoint only those persons as ministers who are recommended by the chief minister.

But, there should be a tribal welfare minister in Chhattisgarh, Jharkhand, Madhya Pradesh and Odisha. Originally, this provision was applicable to Bihar, Madhya Pradesh and Odisha. The 94th Amendment Act

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of 2006 freed Bihar from the obligation of having a tribal welfare minister as there are no Scheduled Areas in Bihar now and the fraction of population of the Scheduled Tribes is very small. The same Amendment also extended the above provision to the newly formed states of Chhattisgarh and Jharkhand.

OATH AND SALARY OF MINISTERS

Before a minister enters upon his office, the governor administers to him the oaths of office and secrecy. In his oath of office, the minister swears: 1. to bear true faith and allegiance to the Constitution of India, 2. to uphold the sovereignty and integrity of India, 3. to faithfully and conscientiously discharge the duties of his office, and 4. to do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill-will.

RESPONSIBILITY OF MINISTERS

Collective, individual and no legal responsibility.

COMPOSITION OF THE COUNCIL OF MINISTERS

The Constitution does not specify the size of the state council of ministers or the ranking of ministers. They are determined by the chief minister according to the exigencies of the time and requirements of the situation.

CABINET

A smaller body called cabinet is the nucleus of the council of ministers. It consists of only the cabinet ministers. It is the real centre of authority in the state government. It performs the following role:

1. It is the highest decisionmaking authority in the politicoadministrative system of a state.
2. It is the chief policy formulating body of the state government.
3. It is the supreme executive authority of the state government.
4. It is the chief coordinator of state administration.
5. It is an advisory body to the governor.
6. It is the chief crisis manager and thus deals with all emergency situations.
7. It deals with all major legislative and financial matters. 8. It exercises control over higher appointments like constitutional authorities and senior secretariat administrators.

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STATE LEGISLATURE

The state legislature occupies a preeminent and central position in the political system of a state.

COMPOSITION OF TWO HOUSES

Composition of Assembly

Strength - Nominated Member - Territorial Constituencies - Readjustment after each census - Reservation of seats for SCs and STs.

Composition of Council

Strength - Manner of Election

DURATION OF TWO HOUSES

Duration of Assembly

Like the Lok Sabha, the legislative assembly is not a continuing chamber. Its normal term is five years from the date of its first meeting after the general elections⁸. The expiration of the period of five years operates as automatic dissolution of the assembly. However, the governor is authorised to dissolve the assembly at any time (i.e., even before the completion of five years) to pave the way for fresh elections.

Duration of Council

Like the Rajya Sabha, the legislative council is a continuing chamber, that is, it is a permanent body and is not subject to dissolution. But, one-third of its members retire on the expiration of every second year. So, a member continues as such for six years. The vacant seats are filled up by fresh elections and nominations (by governor) at the beginning of every third year. The retiring members are also eligible for re-election and re-nomination any number of times.

HIGH COURT

In the Indian single integrated judicial system, the high court operates below the Supreme Court but above the subordinate courts. The judiciary in a state consists of a high court and a hierarchy of subordinate courts. The high court occupies the top position in the judicial administration of a state.

COMPOSITION AND APPOINTMENT

Every high court (whether exclusive or common) consists of a chief justice and such other judges as the president may from time to time deem necessary to appoint. Thus, the Constitution does not specify the strength of a high court and leaves it to the discretion of the president. Accordingly, the

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President determines the strength of a high court from time to time depending upon its workload.

QUALIFICATIONS, OATH AND SALARIES

Qualifications of Judges

A person to be appointed as a judge of a high court, should have the following qualifications: 1. He should be a citizen of India. 2. (a) He should have held a judicial office in the territory of India for ten years; or (b) He should have been an advocate of a high court (or high courts in succession) for ten years.

Oath or Affirmation

A person appointed as a judge of a high court, before entering upon his office, has to make and subscribe an oath or affirmation before the governor of the state or some person appointed by him for this purpose. In his oath, a judge of a high court swears: 1. to bear true faith and allegiance to the Constitution of India; 2. to uphold the sovereignty and integrity of India; 3. to duly and faithfully and to the best of his ability, knowledge and judgement perform the duties of the office without fear or favour, affection or ill-will; and 4. to uphold the Constitution and the laws.

Salaries and Allowances

The salaries, allowances, privileges, leave and pension of the judges of a high court are determined from time to time by the Parliament. They cannot be varied to their disadvantage after their appointment except during a financial emergency. In 2018, the salary of the chief justice was increased from ₹90,000 to 2.50 lakh per month and that of a judge from ₹80,000 to 2.25 lakh per month. They are also paid sumptuary allowance and provided with free accommodation and other facilities like medical, car, telephone, etc. The retired chief justice and judges are entitled to 50% of their last drawn salary as monthly pension.

The **independence of a high court** is very essential for the effective discharge of the duties assigned to it. It should be free from the encroachments, pressures and interferences of the executive (council of ministers) and the legislature. It should be allowed to do justice without fear or favour. The Constitution has made the following provisions to safeguard and ensure the independent and impartial functioning of a high court.

1. Mode of Appointment
2. Security of Tenure
3. Fixed Service Conditions
4. Expenses Charged on Consolidated Fund
5. Conduct of Judges cannot be Discussed
6. Ban on Practice after Retirement
7. Power to Punish for its

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Contempt 8. Freedom to Appoint its Staff 9. Its Jurisdiction cannot be Curtailed 10. Separation from Executive.

JURISDICTION AND POWERS OF HIGH COURT

At present, a high court enjoys the following jurisdiction and powers: 1. Original jurisdiction. 2. Writ jurisdiction. 3. Appellate jurisdiction. 4. Supervisory jurisdiction. 5. Control over subordinate courts. 6. A court of record. 7. Power of judicial review.

TRIBUNALS

The original Constitution did not contain provisions with respect to tribunals. The 42nd Amendment Act of 1976 added a new Part XIV-A to the Constitution. This part is entitled as 'Tribunals' and consists of only two Articles—Article 323 A dealing with administrative tribunals and Article 323 B dealing with tribunals for other matters.

STATE ADMINISTRATIVE TRIBUNALS

The Administrative Tribunals Act of 1985 empowers the Central government to establish the State Administrative Tribunals (SATs) on specific request of the concerned state governments. So far (2019), the SATs have been set up in the nine states of Andhra Pradesh, Himachal Pradesh, Odisha, Karnataka, Madhya Pradesh, Maharashtra, Tamil Nadu, West Bengal and Kerala. However, the Madhya Pradesh, Tamil Nadu Tribunals have since been abolished.

TRIBUNALS FOR OTHER MATTERS

Under Article 323 B, the Parliament and the state legislatures are authorised to provide for the establishment of tribunals for the adjudication of disputes relating to the following matters: (a) Taxation (b) Foreign exchange, import and export (c) Industrial and labour (d) Land reforms (e) Ceiling on urban property (f) Elections to Parliament and state legislatures (g) Food stuffs (h) Rent and tenancy rights.

SUBORDINATE COURTS

CONSTITUTIONAL PROVISIONS

Articles 233 to 237 in Part VI of the Constitution make the following provisions to regulate the organization of subordinate courts and to ensure their independence from the executive¹.

1. Appointment of District Judges
2. Appointment of District Judges

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3. Control over Subordinate Courts
4. Interpretation
5. Application of the above Provisions to Certain Magistrates

STRUCTURE AND JURISDICTION



LOK ADALATS

The Lok Adalat is a forum where the cases (or disputes) which are pending in a court or which are at pre-litigation stage (not yet brought before a court) are compromised or settled in an amicable manner.

GRAM NYAYALAYAS

The Gram Nyayalayas Act, 2008 has been enacted to provide for the establishment of the Gram Nyayalayas at the grass roots level for the purposes of providing access to justice to the citizens at their doorsteps and to ensure that opportunities for securing justice are not denied to any citizen due to social, economic or other disabilities.