

### 3. Governor Of States

- Article 153 to 167 in Part VI of constitution deals with the state executive council
- The state executive consists of the governor, the chief minister , the council of ministers and advocate general of the state
- The governor is the chief executive head of the state ----> he is nominal executive head ----> he acts as a agent of central govt ----> thus governor has a dual role
- Initially there is governor for each state ----> 7th Constitutional amendment act of 1956 ----> facilitated appointment of same person as governor for two or more states
- **Appointment of Governor**
  - The governor's election is neither direct or indirect
  - He is appointed by the President by warrant under his hand and seal
  - Acc to supreme court ----> Governor of state is not an employment under central Government ----> it is an independent constitutional office ----> not subordinate to the central government
- **Draft constitution provided for direct election of Governor, then why not?**
  - Direct election of Governor not compatible with Parliamentary form of Government
  - Direct election can cause conflict between Governor and CM (as both elected by people)
  - As he is only nominal head no point in wasting resources on his election
  - Elected Governor will belong to party and he will not be impartial
  - The election of Governor will create separatist tendency thus effect political stability and unity
  - System of nomination enables the center to maintain it's control on states
  - Direct election creates the problem of leadership at the time of state election
  - The CM would like to nominate his nominee for election for governorship ----> so best man can't win.
- **Qualification for Governor**
  - He should be the citizen of India
  - He should have completed the age of 35
  - He should not belong to the state he is made governor of ----> free from politics of that place

- While Appointing the Governor of state President should the Cm of the states
- Both the convictions are violated in some cases

- **Conditions of Governor's Office**

- He should not be a member of either house of Parliament or the house of state legislature
- He should not hold any other office of Profit
- He is entitled without payment of rent to the use of official residence
- He is entitled to such emoluments, allowances and privileges as may be determined by Parliament
- His emoluments and allowances cannot be diminished during his term of Office
- When the same person is appointed as the governor of two or more state ----> allowance are shared by the state ----> proportion is decided by the president

- **Judicial Privileges**

- He enjoy personal immunity from the legal liability for his official act
- He is immune to any criminal offence
- He cannot be arrested or imprisoned
- However 2 months notice for civil proceedings ----> in respect to personal act

- **Oath**

- faithfully execute the office
- to preserve, protect and defend the constitution
- To devote himself to the service and well being of the people of state
- the oath is governed by the chief justice of high court and in his absence the senior most judge

- **Term of Governor's Office**

- Governor holds office for the term of 5 years
- he holds office till the pleasure of President ----> acc to supreme court this
- He can resign any time by addressing resignation
- The constitution does not lay down any grounds upon which a governor may be removed by the President
- President may transfer a Governor appointed to one state to another state for rest of the term
- President can reappoint in the same state and the other state
- President can make provision for discharge of duties of governor ----> any contingency not provided by govt

- **Power and Functions of Governor**

- He possess executive, legislative, financial and judicial power as president ----> no military, diplomatic and emergency powers like President
- **Executive Powers**
  - All executive actions of st. govt. are taken in his name

- He makes rules specifying the manner in which the order and other instruments made and executed in his name shall be executed
- Rules for more convenient trans. of Business of st. govt. ----> allocation among the min. of said business
- He appoints CM and other ministers ----> they hold office till his pleasure ---  
-> There should be tribal welfare office in state of Chattisgarh, Jharkhand, MP and Odisha appointed by him ----> Bihar was dropped ----> provision by 94th Amendment act
- He appoints advocate general and determines remuneration ----> Holds the office till the pleasure of Governor
- He appoints the state election commissioner and determines his condition of service and tenure of office ----> state commissioner can be removed as Judge of high court
- He appoints the member of state Public service Commission ----> only removed by President not by Governor
- He can seek any info relating to admin of affairs and proposals for legislation from CM
- He recommend the imposition of constitutional emergency in state to the President ----> During President Rule ----> Governor enjoys extensive Power as an agent of President
- He acts as chancellors of Universities in the state ----> He also appoints vice-chancellors
- **Legislative Powers**
  - He can summon or prorogue the the state legislature and dissolve the state legislative assembly
  - He can address the state legislature at the commencement of the first session after each General Election and the first session of each year
  - He can send messages to the house or houses of the state legislature, w.r.t a bill pending in legislature or otherwise
  - He can appoint any member to preside the proceeding of legislative council / legislative assembly when office of chairman and Deputy Chairman / Speaker and Deputy Speaker fall vacant
  - He nominates 1/6th member of the legislative council amongst person of special knowledge etc...
  - He can nominate one member to legislature assembly from Anglo-Indian Origin
  - He decides on the question of disqualification of member of legislative council in consultation with election commission
  - When a bill is sent to governor after it is passed in state legislature :
    - he can give assent to bill
    - he can withhold his assent to the bill

- he can return bill for reconsideration(considered that bill is not money) ---  
-> if approved once again ----> has to provide his assent
- Reserve the bill for the consideration of the president : following case its mandatory to ask for consideration
  - the bill passed by the state legislature endangers the position of the state high court
  - "ultra-vires" i.e. against the provision of constitution
  - Opposed to the directive principles of state policy
  - against the large interest of country
  - of grave national importance
  - dealing with compulsory acquisition of Property under Article 31A of constitution
- He can promulgate the ordinances when state legislature not in action
- He lays the report of state Finance commission, State PSC, the comptroller and Auditor-general relating to the accounts of the state, before state Legislature
- Financial Powers
  - He see that Annual financial statement( state budget) is laid before the state legislature
  - Money bill can be introduced only with his prior recommendation
  - No demand for a grant can be made except on his recommendation
  - He can make advances out of the contingency Fund of the state to meet any unforeseen expenditure
  - He constitutes a finance commission after every five years to review the financial position of the panchayats and the municipalities
- Judicial Powers
  - He can grant pardon, reprieves, respites and remission of Punishment ----> suspend, remit and commute the sentence of any person convicted of any offence against any law relating to matter to which executive powers of state extends
  - He is considered by President while appointing the judge of the concerned state high court
  - He makes appointments, postings and promotions of district judges in consultation with the state high court
  - He also appoint person to judicial service of state in consultation with the state high court and State Public service commission

## Comparing the Veto power of President and Governor

<u>President with regards to ordinary Bill</u>	<u>Governor with regards to ordinary bill</u>
When ever a bill is passed by both the houses of Parliament, it is presented to President for his assent, in such situation he has three option:	When a bill is sent to governor after it is passed in state legislature, it is presented to the governor for his assent
<ol style="list-style-type: none"> <li>1. gives his assent to the bill - → becomes act</li> <li>2. withhold his assent to the bill - → then does not become act</li> <li>3. return bill (if not a money bill) for reconsideration of the Parliament</li> <li>4. If bill is passed again, with or without amendments, president has to give his assent to the bill - → enjoy suspensive veto</li> </ol>	<ol style="list-style-type: none"> <li>1. he can give assent to bill</li> <li>2. he can withhold his assent to the bill</li> <li>3. he can return bill for reconsideration(considered that bill is not money) - → if approved once again - → has to provide is assent - → suspensive veto</li> <li>4. Reserve the bill for the consideration of the president <ul style="list-style-type: none"> <li>â€¢gives his assent to the bill - → becomes act</li> <li>â€¢withhold his assent to the bill - → then does not become act</li> <li>â€¢return bill (if not a money bill) for reconsideration of the Parliament</li> <li>â€¢f bill is passed again, with or without amendments, president <b>is not bound</b> to give his assent to the bill</li> <li>â€¢When governor reserves the bill for review by President - → he will have no further enactment of the bill</li> </ul> </li> </ol>

## Comparing the money bill of President and Governor

<u>President with regards to money Bill</u>	<u>Governor with regards to money bill</u>
When ever a bill is passed by both the houses of Parliament, it is presented to President for his assent, in such situation he has two option:	When a bill is sent to governor after it is passed in state legislature, it is presented to the governor for his assent
<ol style="list-style-type: none"> <li>1. gives his assent to the bill - → becomes act</li> <li>2. withhold his assent to the bill - → then does not become act</li> </ol>	<ol style="list-style-type: none"> <li>1. he can give assent to bill</li> <li>2. he can withhold his assent to the bill</li> <li>3. Reserve the bill for the consideration of the president <ul style="list-style-type: none"> <li>â€¢gives his assent to the bill - → becomes act</li> <li>â€¢withhold his assent to the bill - → then does not become act</li> <li>â€¢When governor reserves the bill for review by President - → he will have no further enactment of the bill</li> </ul> </li> </ol>

## Comparing ordinance making power of President and Governor

<u>President</u>	<u>Governor</u>
<ol style="list-style-type: none"> <li>1. He can promulgate the ordinances when Parliament not in action</li> <li>2. He promulgate an ordinance only when its necessary</li> <li>3. The power of ordinance making is co-extensive with legislative powers of Parliament, i.e he can only issue ordinances on those subjects on which Parliament can make law</li> <li>4. Ordinance has same force and effect as act of Parliament</li> <li>5. Ordinance is subject to same limitations as an act of Parliament</li> <li>6. He can withdraw an ordinance anytime</li> <li>7. His ordinance making power is not discretionary power - → he can only promulgate ordinance only on the advice of PM and council of Minister</li> <li>8. Ordinance issued by him should be laid before both the houses of Parliament when it reassembles</li> <li>9. An ordinance issued by him ceases to operate on the expiry of six weeks from reassembly of Parliament. If parliament disapproves it, it might cease to operate before that time</li> <li>10. He needs no instruction for making an ordinance</li> </ol>	<ol style="list-style-type: none"> <li>1. He can promulgate the ordinances when state legislature not in action</li> <li>2. He promulgate an ordinance only when its necessary</li> <li>3. The power of ordinance making is co-extensive with legislative powers of state legis., i.e he can only issue ordinances on those subjects on which Parliament can make law</li> <li>4. Ordinance has same force and effect as act of state legislature</li> <li>5. Ordinance is subject to same limitations as an act of state legislature</li> <li>6. He can withdraw an ordinance anytime</li> <li>7. His ordinance making power is not discretionary power - → he can only promulgate ordinance only on the advice of CM and council of Minister</li> <li>8. Ordinance issued by him should be laid before. SL and Vidhan parishad when it reassembles</li> <li>9. An ordinance issued by him ceases to operate on the expiry of six weeks from reassembly of SL. If SL disapproves it, it might cease to operate before that time</li> <li>10. He cannot make an ordinance without instruction from the President of India : <ul style="list-style-type: none"> <li>â€¢f the act of SL containing the same provision would have been invalid without receiving the President's assent</li> <li>â€¢f a bill containing the same provision would have requires the previous sanction of President foe its intro into SL</li> <li>â€¢f he would have deemed it necessary to reserve a bill containing the same provisions for the consideration of the President</li> </ul> </li> </ol>

## Comparing pardoning power of President and Governor

<u>President</u>	<u>Governor</u>
1. He can pardon, <u>reprive</u> , respite, remit, suspend or commute the punishment or sentence of any person convicted of any offence against the central law 2. He can pardon, <u>reprive</u> , respite, remit, suspend or commute the death sentence. He is the only authority to pardon a death sentence 3. He can pardon, <u>reprive</u> , respite, remit, suspend or commute the punishment or sentence by court martial (military court)	1. He can pardon, <u>reprive</u> , respite, remit, suspend or commute the punishment or sentence of any person convicted of any offence against the state law 2. He cannot pardon a death sentence. state convicts a death sentence - → only president can pardon - → governor can suspend, remit or commute a death sentence 3. He has no such provision

- **Constitutional Position of governor (ARTICLE 154/163/164) - ---> read M LaxmiKamth**

- The executive power of state rest with governor ----> shall be exercised directly or thru officer subordinate to him ----> accordance with constitution
- There should be a council of Minster and Cm to aid and advice the governor ----> unless otherwise governor has to exercise his function in discretion
- The council of minister shall be collectively responsible to the legislative assembly of the state
- The constitutional position of governor differ from the President

<u>Governor</u>	<u>President</u>
1. Constitution envisage the possibility of the governor acting at the times of his discretion 2. No such provision has been made w.r.t the governor	1. No such possibility for the president 2. After 42nd Amendment (1976) ministerial advice has been made binding on President

- The constitution make it clear ----> matter falls in the discretion of Governor or not ----> the decision of Governor is final and cannot be questioned ----> the governor has constitutional discretion in following cases:
  - Reservation of a bill for the consideration of President
  - Recommendation for imposition of President's rule in the state
  - While exercising his functions as the admin of an adjoining union territory
  - Determining the amount payable by the Government of Assam, Meghalaya, Tirpura and Mizoram to an autonomous Tribal district Council as royalty accruing from license for mineral exploration
  - Seeking info from CM w.r.t the admin and legislative issues of the state