

# CHAPTER 32

## State Council of Ministers

**A**s the Constitution of India provides for a parliamentary system of government in the states on the Union pattern, 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.

The principles of parliamentary system of government are not detailed in the Constitution; but two Articles (163 and 164) deal with them in a broad, sketchy and general manner. Article 163 deals with the status of the council of ministers while Article 164 deals with the appointment, tenure, responsibility, qualifications, oath and salaries and allowances of the ministers.

### CONSTITUTIONAL PROVISIONS

#### Article 163—Council of Ministers to aid and advise Governor

1. There shall be a Council of Ministers with the Chief Minister as the head to aid and advise the Governor in the exercise of his/her functions, except in so far as he/she is required to exercise his/her functions in his/her discretion.
2. If any question arises whether a matter falls within the Governor's discretion or not, decision of the Governor shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he/she ought or ought not to have acted in his/her discretion.

3. The advice tendered by Ministers to the Governor shall not be enquired into in any court.

#### Article 164—Other Provisions as to Ministers

1. The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister. However, in the states of Chhattisgarh, Jharkhand, Madhya Pradesh and Odisha, there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the scheduled castes and backward classes or any other work. The state of Bihar was excluded from this provision by the 94th Amendment Act of 2006.
2. The total number of ministers, including the chief minister, in the council of ministers in a state shall not exceed 15 per cent of the total strength of the legislative assembly of that state. But, the number of ministers, including the chief minister, in a state shall not be less than 12. This provision was added by the 91st Amendment Act of 2003.
3. A member of either House of state legislature belonging to any political party who is disqualified on the ground of defection shall also be disqualified to be appointed as a minister. This provision was also added by the 91st Amendment Act of 2003.
4. The ministers shall hold office during the pleasure of the Governor.



5. The council of ministers shall be collectively responsible to the state Legislative Assembly.
6. The Governor shall administer the oaths of office and secrecy to a minister.
7. A minister who is not a member of the state legislature for any period of six consecutive months shall cease to be a minister.
8. The salaries and allowances of ministers shall be determined by the state legislature.

### Article 166—Conduct of Business of the Government of a State

1. All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.
2. Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor. Further, the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.
3. The Governor shall make rules for the more convenient transaction of the business of the government of the state, and for the allocation among ministers of the said business in so far as it is not business with respect to which the Governor is required to act at his/her discretion.

### Article 167—Duties of Chief Minister

It shall be the duty of the Chief Minister of each state

1. to communicate to the governor of the state all decisions of the council of ministers relating to the administration of the affairs of the state and proposals for legislation
2. to furnish such information relating to the administration of the affairs of the state and proposals for legislation as the governor may call for

3. If the governor so requires, to submit for the consideration of the council of ministers any matter on which a decision has been taken by a minister but which has not been considered by the council

### Article 177—Rights of Ministers as Respects the Houses

Every minister shall have the right to speak and take part in the proceedings of the Assembly (and also the Council where it exists) and any Committee of the State Legislature of which he/she may be named a member. But he/she shall not be entitled to vote.

### NATURE OF ADVICE BY MINISTERS

Article 163 provides for a council of ministers with the chief minister at the head to aid and advise the governor in the exercise of his/her functions except for the discretionary ones. If any question arises whether a matter falls within the governor's discretion or not, the decision of the governor is final and the validity of anything done by him/her cannot be called in question on the ground that he/she ought or ought not to have acted at his/her discretion. Further, the nature of advice tendered by ministers to the governor cannot be enquired by any court. This provision emphasises the intimate and the confidential relationship between the governor and the ministers.

In *Shamsher Singh* case<sup>1</sup> (1974), the Supreme Court held that except in spheres where the governor is to act at his/her discretion, the governor has to act on the aid and advice of the council of ministers in the exercise of his/her powers and functions. He/she is not required to act personally without the aid and advice of the council of ministers or against the aid and advice of the council of ministers. Wherever the Constitution requires the satisfaction of the governor, the satisfaction is not the personal satisfaction of the governor but it is the satisfaction of the council of ministers.

<sup>1</sup>*Shamsher Singh vs. State of Punjab* (1974).





## 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<sup>1a</sup>. Originally, this provision was applicable to Bihar, Madhya Pradesh and Odisha. The 94th Amendment Act 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.

Usually, the members of the state legislature, either the legislative assembly or the legislative council, are appointed as ministers. A person who is not a member of either House of the state legislature can also be appointed as a minister. But, within six months, he/she must become a member (either by election or by nomination) of either House of the state legislature, otherwise, he/she ceases to be a minister.

A minister who is a member of one House of the state legislature has the right to speak and to take part in the proceedings of the other House. But, he/she can vote only in the House of which he/she is a member.

## OATH AND SALARY OF MINISTERS

Before a minister enters upon his/her office, the governor administers to him/her the oaths of office and secrecy. In his/her 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/her 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.

In his/her oath of secrecy, the minister swears that he/she will not directly or indirectly communicate or reveal to any person(s) any matter that is brought under his/her consideration or becomes known to him/her as a state minister except as may be required for the due discharge of his/her duties as such minister.

The salaries and allowances of ministers are determined by the state legislature from time to time. A minister gets salary and allowances, which are payable to a member of the state legislature. Additionally, he/she gets a sumptuary allowance (according to his/her rank), free accommodation, travelling allowance, medical facilities, etc.

## RESPONSIBILITY OF MINISTERS

### Collective Responsibility

The fundamental principle underlying the working of parliamentary system of government is the principle of collective responsibility. Article 164 clearly states that the council of ministers is collectively responsible to the legislative assembly of the state. This means that all the ministers own joint responsibility to the legislative assembly for all their acts of omission and commission. They work as a team and swim or sink together. When the legislative assembly passes a no-confidence motion against the council of ministers, all the ministers have to resign including those ministers who are from the legislative council<sup>2</sup>. Alternatively,

<sup>1a</sup>They may, in addition, be in charge of the welfare of the SCs and BCs or any other work.

<sup>2</sup>Each minister need not resign separately; the resignation of the chief minister amounts to the resignation of the entire council of ministers.





the council of ministers can advise the governor to dissolve the legislative assembly on the ground that the House does not represent the views of the electorate faithfully and call for fresh elections. The governor may not oblige the council of ministers which has lost the confidence of the legislative assembly.

The principle of collective responsibility also means that the cabinet decisions bind all cabinet ministers (and other ministers) even if they deferred in the cabinet meeting. It is the duty of every minister to stand by the cabinet decisions and support them both within and outside the state legislature. If any minister disagrees with a cabinet decision and is not prepared to defend it, he/she must resign. Several ministers have resigned in the past owing to their differences with the cabinet.

### Individual Responsibility

Article 164 also contains the principle of individual responsibility. It states that the ministers hold office during the pleasure of the governor. This means that the governor can remove a minister at a time when the council of ministers enjoys the confidence of the legislative assembly. But, the governor can remove a minister only on the advice of the chief minister. In case of difference of opinion or dissatisfaction with the performance of a minister, the chief minister can ask him/her to resign or advise the governor to dismiss him/her. By exercising this power, the chief minister can ensure the realisation of the rule of collective responsibility.

### No Legal Responsibility

As at the Centre, there is no provision in the Constitution for the system of legal responsibility of the minister in the states. It is not required that an order of the governor for a public act should be countersigned by a minister. Moreover, the courts are barred from enquiring into the nature of advice rendered by the ministers to the governor.

## 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.

Like at the Centre, in the states too, the council of ministers consists of three categories of ministers, namely, cabinet ministers, ministers of state, and deputy ministers. The difference between them lies in their respective ranks, emoluments, and political importance. At the top of all these ministers stands the chief minister—supreme governing authority in the state.

At times, the council of ministers may also include a deputy chief minister. The deputy chief ministers are appointed mostly for local political reasons.

The cabinet ministers head the important departments of the state government like home, education, finance, agriculture and so forth<sup>3</sup>. They are members of the cabinet, attend its meetings and play an important role in deciding policies. Thus, their responsibilities extend over the entire gamut of state government.

The ministers of state can either be given independent charge of departments or can be attached to cabinet ministers. However, they are not members of the cabinet and do not attend the cabinet meetings unless specially invited when something related to their departments are considered by the cabinet.

Next in rank are the deputy ministers. They are not given independent charge of departments. They are attached to the cabinet ministers and assist them in their administrative, political and parliamentary duties. They are not members of the cabinet and do not attend cabinet meetings.

<sup>3</sup>The term 'ministry' or 'ministries' is used only in the centre and not in the states. In other words, the state government is divided into departments and not ministries.





## 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 decision-making authority in the politico-administrative 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 the 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.

## CABINET COMMITTEES

The cabinet works through various committees called cabinet committees. They are of two types—standing and ad hoc. The former are of a permanent nature while the latter are of a temporary nature.

They are set up by the chief minister according to the exigencies of the time and requirements of the situation. Hence, their number, nomenclature and composition varies from time to time.

They not only sort out issues and formulate proposals for the consideration of the cabinet but also take decisions. However, the cabinet can review their decisions.

**Table 32.1** Articles Related to the State Council of Ministers at a Glance

Article No.	Subject-matter
163.	Council of Ministers to aid and advise Governor
164.	Other provisions as to Ministers
166.	Conduct of business of the Government of a State
167.	Duties of Chief Minister as respects the furnishing of information to Governor, etc.
177.	Rights of Ministers as respects the Houses