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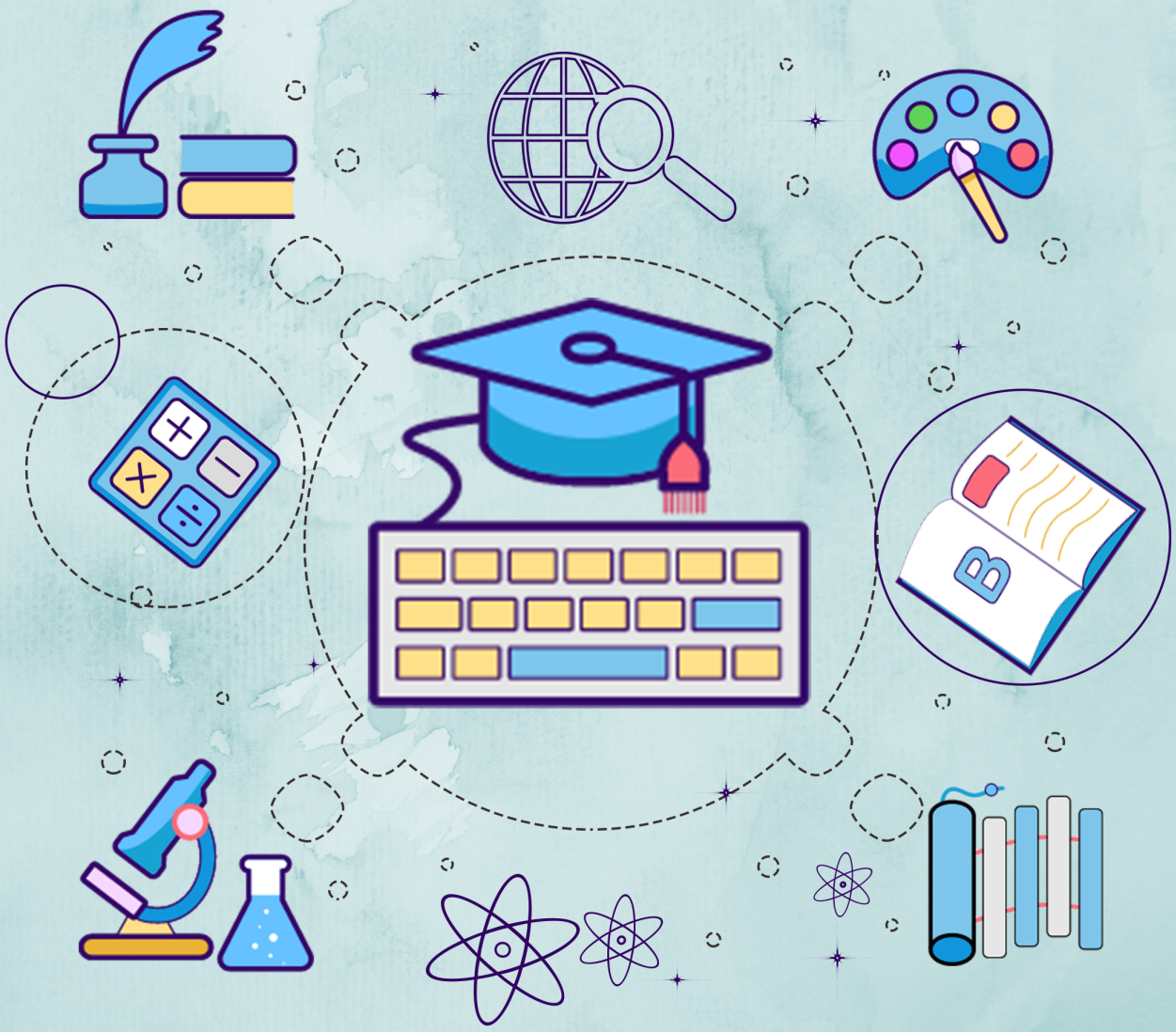

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MODULE - 4

- The State Executive
- The State Legislature
- The State Judiciary

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The State Executive

- The state executive consists of the governor, the chief minister, the council of ministers and the advocate general of the state
- Part VI of the Constitution deals with the government in the states
- Articles 153 to 167 in Part VI of the Constitution deal with the state executive.
- There is no office of vice-governor (in the state) like that of Vice-President at the Centre.

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The Governor

- The governor is the chief executive head of the state
- The governor also acts as an agent of the central government.
- Usually, there is a governor for each state, but the 7th Constitutional Amendment Act of 1956 facilitated the appointment of the same person as a governor for two or more states.

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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.

Qualifications for the appointment

1. He should be a citizen of India.
2. He should have completed the age of 35 years.
3. He should not be a member of either House of Parliament or a House of the state legislature.
4. He should not hold any other office of profit

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TERM OF GOVERNOR'S OFFICE

- A governor holds office for a term of five years from the date on which he enters upon his office.
- The President may transfer a Governor appointed to one state to another state for the rest of the term.
- Further, a Governor whose term has expired may be reappointed in the same state or any other state.

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POWERS AND FUNCTIONS OF GOVERNOR

1. Executive powers: He appoints the chief minister and other ministers, advocate general of a state, state election commissioner, the chairman and members of the state public service commission, acts as the chancellor of universities in the state. He also appoints the vice chancellors of universities in the state.
2. Legislative powers: He can address the state legislature , He nominates one-sixth of the members of the state legislative council from amongst persons having special knowledge or practical experience in literature, science, art, cooperative movement and social service. He can nominate one member to the state legislature assembly from the Anglo-Indian Community.

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3. **Financial powers:** He sees that the Annual Financial Statement (state budget) is laid before the state legislature. 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
4. **Judicial powers:** He is consulted by the president while appointing the judges of the concerned state high court. He makes appointments, postings and promotions of the district judges in consultation with the state high court.

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Chief Minister

- Chief Minister is the head of the state government.
- Article 164 says that the Chief Minister shall be appointed by the governor.
- 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. In such a situation, the governor usually appoints the leader of the largest party or coalition in the assembly as the Chief Minister and ask him to seek a vote of confidence in the House within a month.

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APPOINTMENT OF CHIEF MINISTER

- A person who is not a member of the state legislature can be appointed as Chief Minister for six months
- According to the Constitution, the Chief Minister may be a member of any of the two Houses of a state legislature.

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TERM

- The term of the Chief Minister is not fixed and he holds office during the pleasure of the governor. However, this does not mean that the governor can dismiss him at any time.
- He cannot be dismissed by the governor as long as he enjoys the majority support in the legislative assembly.
- But, if he loses the confidence of the assembly, he must resign or the governor can dismiss him.

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POWERS AND FUNCTIONS OF CHIEF MINISTER

- **In Relation to Council of Ministers**

✓ **The governor appoints only those persons as ministers who are recommended by the Chief Minister.**

✓ **He allocates and reshuffles the portfolios among ministers. He can ask a minister to resign or advise the governor to dismiss him in case of difference of opinion.**

✓ **He presides over the meetings of the council of ministers and influences its decisions.**

✓ **He guides, directs, controls and coordinates the activities of all the ministers.**

- **In Relation to the Governor**

✓ **He is the principal channel of communication between the governor and the council of ministers, to communicate to the Governor of the state all decisions of the council of ministers relating to the administration.**

✓ **He advises the governor with regard to the appointment of important officials like advocate general, chairman and members of the state public service commission, state election commissioner, and so on.**

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Other Powers and Functions

❑ **He is the chairman of the State Planning Board.**

❑ **He is a member of the Inter-State Council and the Governing Council of NITI Aayog, both headed by the prime minister.**

❑ **He is the chief spokesman of the state government.**

❑ **He is the crisis manager-in-chief at the political level during emergencies etc.,**

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State Council of Ministers

- 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.
- Article 163: 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 functions

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APPOINTMENT OF MINISTERS

- 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.
- 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.

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Advocate General of the State

- The Constitution (Article 165) has provided for the office of the advocate general for the states.
- He is the highest law officer in the state.

❑ APPOINTMENT AND TERM

- The advocate general is appointed by the governor.
- He must be a person who is qualified to be appointed a judge of a high court. In other words, he must be a citizen of India and must have held a judicial office for ten years or been an advocate of a high court for ten years
- The term of office of the advocate general is not fixed by the Constitution.
- He holds office during the pleasure of the governor. This means that he may be removed by the governor at any time.

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DUTIES AND FUNCTIONS

1. To give advice to the government of the state upon such legal matters which are referred to him by the governor.
2. To perform such other duties of a legal character that are assigned to him by the governor.
3. To discharge the functions conferred on him by the Constitution or any other law.
4. The advocate general is entitled to appear before any court of law within the state.

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UNION TERRITORIES

Under Article 1 of the Constitution, the territory of India comprises three categories of territories:

(a) Territories of the states;

(b) Union territories; and

(c) Territories that may be acquired by the Government of India at any time.

- At present, there are 28 States and 8 Union Territories and no acquired territories.
- The union territories, on the other hand, are those areas which are under the direct control and administration of the Central government. Hence, they are also known as 'centrally administered territories'

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- Articles 239 to 241 in Part VIII of the Constitution deal with the union territories.
- Every union territory is administered by the President acting through an administrator appointed by him.
- An administrator of a union territory is an agent of the President and not head of state like a governor.
- The President can specify the designation of an administrator; it may be Lieutenant Governor or Chief Commissioner or Administrator.

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- There are 8 Union territories in India. The list for the same is given below:

1. Andaman and Nicobar Islands
2. Dadra and Nagar Haveli and Daman and Diu
3. Chandigarh
4. Lakshadweep
5. Puducherry
6. Delhi
7. Ladakh
8. Jammu and Kashmir

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State Legislature

Articles 168 to 212 in Part VI of the Constitution deal with the organisation, composition, duration, officers, procedures, privileges, powers and so on of the state legislature.

ORGANISATION OF STATE LEGISLATURE

- ✓ There is no uniformity in the organisation of state legislatures.
- ✓ Most of the states have an unicameral system, while others have a bicameral system.
- ✓ In the states having bicameral system, the state legislature consists of the governor, the legislative council and the legislative assembly.
- ✓ The legislative council (Vidhan Parishad) is the upper house (second chamber or house of elders), while the legislative assembly (Vidhan Sabha) is the lower house (first chamber or popular house).

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COMPOSITION OF TWO HOUSES

Composition of Legislative Assembly

- The legislative assembly consists of representatives directly elected by the people on the basis of universal adult franchise.
- Its maximum strength is fixed at 500 and minimum strength at 60.
- The governor can nominate one member from the Anglo-Indian community
- The Constitution provided for the reservation of seats for scheduled castes and scheduled tribes in the assembly of each state on the basis of population ratios.

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Composition of Legislative Council

- Unlike the members of the legislative assembly, the members of the legislative council are indirectly elected.
- The maximum strength of the council is fixed at one-third of the total strength of the assembly and the minimum strength is fixed at 40

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DURATION OF TWO HOUSES

- The legislative assembly is not a continuing chamber.
- Its normal term is five years from the date of its first meeting after the general elections
- 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.

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MEMBERSHIP OF STATE LEGISLATURE

Qualifications

- He must be a citizen of India.
- To bear true faith and allegiance to the Constitution of India
- To uphold the sovereignty and integrity of India
- He must be not less than 30 years of age in the case of the legislative council and not less than 25 years of age in the case of the legislative assembly.
- A person to be elected to the legislative assembly must be an elector for an assembly constituency in the concerned state.
- He must be a member of a scheduled caste or scheduled tribe if he wants to contest a seat reserved for them.

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Disqualifications

- If he is of unsound mind and stands so declared by a court
- If he is not a citizen of India or has voluntarily acquired the citizenship of a foreign state or is under any acknowledgement of allegiance to a foreign state
- If he is so disqualified under any law made by Parliament.
- He must not have been found guilty of certain election offences or corrupt practices in the elections.
- He must not have been convicted for any offence resulting in imprisonment for two or more years.
- He must not have failed to lodge an account of his election expenses within the time.
- He must not have been dismissed from government service for corruption or disloyalty to the state.

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PRESIDING OFFICERS OF STATE LEGISLATURE

- Each House of state legislature has its own presiding officer.
- There is a Speaker and a Deputy Speaker for the legislative assembly. The Speaker and Deputy Speaker are elected by the assembly itself from amongst its members.
- A Chairman and a Deputy Chairman for the legislative council.
- Chairman and Deputy Chairman are elected by the council itself from amongst its members

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Powers and Functions of The State Legislature

- **Law Making Function:** The State Legislature is empowered to make laws on State List and Concurrent List
- **Financial Powers:** The State Legislature keeps control over the finances of the State

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The State Judiciary

- 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.
- Articles 214 to 231 in Part VI of the Constitution deal with the organisation, independence, jurisdiction, powers, procedures and so on of the high courts.

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High Court

- The Constitution of India provides for a high court for each state, but the Seventh Amendment Act of 1956 authorised the Parliament to establish a common high court for two or more states or for two or more states and a union territory.
- The Constitution does not specify the strength of a high court and leaves it to the discretion of the president.

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Appointment of Judges

- The judges of a high court are appointed by the President.
- The chief justice is appointed by the President after consultation with the chief justice of India and the governor of the state concerned.

Qualifications of Judges

1. He should be a citizen of India.
2. 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.

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JURISDICTION AND POWERS OF HIGH COURT

- **Original Jurisdiction:** It means the power of a high court to hear disputes in the first instance, not by way of appeal
- **Writ Jurisdiction:** Article 226 of the Constitution empowers a high court to issue writs including habeas corpus, mandamus, certiorari, prohibition and quo warranto for the enforcement of the fundamental rights of the citizens and for any other purpose.
- The high court can issue writs to any person, authority and government not only within its territorial jurisdiction but also outside its territorial jurisdiction.

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- **Appellate Jurisdiction**: A high court is primarily a court of appeal. It hears appeals against the judgments of subordinate courts functioning in its territorial jurisdiction. It has appellate jurisdiction in both civil and criminal matters.
- **Supervisory Jurisdiction:** A high court has the power of superintendence over all courts and tribunals functioning in its territorial jurisdiction (except military courts or tribunals).

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- **Control over Subordinate Courts: A high court has an administrative control and other powers over the subordinate courts**
- **A Court of Record: The judgments, proceedings and acts of the high courts are recorded for perpetual memory and testimony.**
- **Power of Judicial Review: Judicial review is the power of a high court to examine the constitutionality of legislative enactments and executive orders of both the Central and state governments.**

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