



CONSTITUTIONAL LAW, CYBER LAW, IP LAW AND PROFESSIONAL ETHICS

Unit 2: Federal System - Legislature, Executive and Judiciary

Article 52 to 78

- Part V of the Indian constitution deals about union Executive.
- Constitution establishes Parliamentary form of government.
- Union Executive Consists of The President, Vice-President, Council of Ministers headed by the Prime Minister and Attorney General of India.
- President is the head of the Indian states.
- Close resemblance with the British Model

Article 52 provides that there shall be a President of India and

Article 53 provides that the executive powers of the Union shall be vested in the President of India and shall be exercised either directly or through officers subordinate to him in accordance with the Constitution.

Thus President of India is bound to act in accordance with the Constitution.

Article 54 The President shall be elected by the members of an electoral college consisting of-

- (a) the elected members of both Houses of Parliament; and
- (b) the elected members of the Legislative Assemblies of the States.

The nominated members of the parliament & legislative assemblies and members of the legislative council cannot vote in the president election.

The electoral college consists of the elected members of both Houses of Parliament and the state Legislative Assemblies. [including National capital territory of Delhi and Puducherry]

Election to be held before the expiry of the tenure of the President in office (article 62 (1)). If the office falls vacant by death, resignation, removal or otherwise, election must be conducted within 6 months of the date of the vacancy. Once elected the President serves for 5 years.

Constitutional Law, Cyber Law and Professional Ethics

Union Executive- President



- **Article 56. Term of office of President**
- The President shall hold office for a term of **five years**
 - (a) the President may, by writing under his hand addressed to the Vice-President, **resign** his office;
 - (b) the President may, for violation of the Constitution, be **removed** from office by impeachment.
 - (c) Any resignation addressed to the Vice-President - **communicated to the Speaker** of the House of the People.

Article 58. Qualification for election as President

The candidate-

- (a) Should be a citizen of India;
- (b) Should be of not less than 35 years of age;
- (c) Should be qualified for elections as a member of the House of people; [i.e he must be registered as a voter in an parliamentary constituency,]
- (d) Should not hold any office of profit under the Government of India or any state Government or any local authority subject to the control of any of the said Government;
- (e) Must not be a member of the parliament.

The President is eligible to be re-elected without any restrictions.

But a person shall not be deemed to hold office of profit who is the president or the vice-president of the Union or the Governor of any state or the Minister of the Union or of any state.

Condition of President's Office: **Article 59**

Article 59 says that the:

- The President cannot be a member of either House of Parliament or of any other House of the Legislature of any State.
- If he is a member of either House of Parliament or a member of a House of the Legislature of any State, he shall be deemed to vacate his seat in that House on the date of entering into his office as President.
- The President shall not hold any other office of profit.
- **Official residence, emoluments, and allowances of President**
- The President shall be entitled to the use of his official residences free of rent.

- He shall be also entitled to emoluments, allowances, and privileges determined by Parliament.
- The emoluments and allowances of the President cannot be diminished or reduced during his term of office.

Apart from all these conditions and rules, the President of India is also entitled to certain allowances and privileges, as he is the first citizen of the country. The President of India is entitled to rent-free accommodation, allowances, and privileges by law.

He is also entitled to:

- 1] Free medical facilities;
- 2] Free accommodation;
- 3] Free treatment for life;
- 4] The official state car of the President.

The salary of the President has undergone several changes since independence. Some of these changes were: In 1951, the President of India used to get a salary of Rs. 10,000 and 15000 rupees as an allowance.

In 1985, the President of India used to get a salary of Rs. 15,000 and 30000 rupees as an allowance.

In 1989, the President of India used to get a salary of Rs. 20,000 and 50000 rupees as an allowance.

In 1998, the salary was increased to Rs. 50,000

In 2008, the salary was increased to Rs. 1,50,000.

In 2016, the salary was increased to Rs. 5,00,000, it is increased in 2024- upto 5.9 lakh

Rashtrapati Bhavan is the President's official residence, including reception halls, guest rooms, and offices. It is the largest residence of any head of state in the world.

Constitutional Law, Cyber Law and Professional Ethics

Union Executive- President



Article - 60: Oath or affirmation by the President

According to **Article 60**, before entering upon his office, the president has to take an oath or an affirmation in the presence of the Chief Justice of India or, in his absence, the senior-most Judge of the Supreme Court available, an oath or affirmation in the following form, that is to say—

—I, A.B., do swear in the name of God that I will faithfully execute the office solemnly affirm of President (or discharge the functions of the President) of India and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and wellbeing of the people of India.".

Constitutional Law, Cyber Law and Professional Ethics

Union Executive- President



- **Article 61. Procedure for impeachment of the President**

The President of India can be impeached under Article 61, for the violation of the Constitution, on the basis of charges initiated by either House of Parliament.

A resolution with the proposal to prefer such charges must be signed by at least one-fourth of the total members of the house and moved after giving at least 14 days advance notice. The resolution also needs to be passed by at least two-thirds majority of the house.

When the resolution is passed by one of the Houses, the other House must investigate the charges. The President has been granted the right to be present or to be represented in such investigations.

When the House investigating the charges passes the resolution by a two-thirds majority and declares the charges as sustaining, it results in removing the President from his office from the date of passing of the resolution

Constitutional Law, Cyber Law and Professional Ethics

Union Executive- President



Article 62 - Time of holding the election on expiry of the term and filling casual vacancies:

Article 62 provides for the filling up of the vacancy to the office of the President. It defines the terms of office of the person filling the casual vacancy as well as the time of holding elections to fill the vacancy.

It states that an election to fill the vacancies must be fulfilled before the expiration of the term of the office of the President.

An election to fill the vacancies, occurring due to the death, resignation or impeachment of the President, must be done as soon as possible. The elections, in any case, must be conducted within a time period of six months from the date of occurrence of the vacancy.

Constitutional Law, Cyber Law and Professional Ethics

Union Executive- President



The new person elected to the office of the President will be subject to all the provisions of Article 56 and will hold his office for a five-year term from the date of entering into the office.

Privileges of the President: Article 361

As President, He will enjoy the degree of immunity. Under Article 361, the President is protected from being answerable to any court for:

1. The president shall not be answerable to any court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise of those powers and duties. However, the conduct of the president may be brought under review by any court, tribunal or body appointed or designed by either houses of parliament for the investigation of the charge in impeachment proceedings. Thus the immunity afforded to the president will not restrict the right of any person to bring suit against the government of India.

- No **criminal proceedings** whatsoever shall be instituted or continued against the President in any court **during his term of office**.
- No **process for the arrest** or imprisonment of the President shall issue from any court **during his term of office**.
- No **civil proceedings** in which relief is claimed against the President shall be instituted during his term of office in any court in respect of any act done or purporting to be done by him in his personal capacity whether before or after he had entered upon his office until -
 - (a) a notice writing has been given to the president
 - (b) 2 months have passed after the service of such notice and
 - (c) the notice states the nature of proceeding, the cause of action, the name, residence and description of the party taking the proceedings and the relief claimed.

Powers of the President

Executive powers

Article 53 of the Indian Constitution states that all the executive powers of the Union will be vested in the President of India. President is allowed to exercise his executive powers through officers subordinate to him, directly or indirectly, in consonance to the provisions of the Constitution.

Under this article, the President has powers regarding:

- Appointment of the high authorities of the Constitution like the Prime Minister and the Council of Ministers;
- Right of being informed about all the national affairs;

Powers of the President

Executive powers

- Appointment of the judges of the constitutional courts(Supreme Court and High Courts);
- Appointment of the state Governors, the Attorney General, the Comptroller, and Auditor General, the Chief Commissioner and members of the Election Commission of India;
- Administration of Union territories and appointment of the Chief Commissioners and Lieutenant Governor of the Centrally Administered Areas;
- Removal of the Council of Ministers, the state Governors, the Attorney General.

Powers of the President

Military powers

Article 53 also states that the President shall be the Supreme Commander of all the Armed Forces of the Union of India. It also states that no specific provisions can reduce the scope of this general principle. As the Supreme Commander of the Armed Forces of the Union, President has powers regarding:

- Appointment of all the officers, including the appointment of the chiefs of the forces;
- Wars are waged in the name of the President;
- Peace is concluded in the name of the President.

Powers of the President

Diplomatic powers

The President forms the Indian diplomacy and helps the nation to maintain cordial relationships with countries across the globe.

- All the Ambassadors and high commissioners in foreign nations are his representatives;
- He receives the credentials of the Diplomatic representatives of other nations;
- Prior to ratification by Parliament, the treaties and agreements with other nations, are negotiated by the President.

Powers of the President

Legislative powers

The President also enjoys certain legislative powers like:

- During the budget session, the President is the first to address the Parliament;
- The President is empowered to summon a joint session in order to break the deadlock in the legislation process between the two Houses of the Parliament;
- President sanction is mandatory in cases of provisions relating to:
 - creating a new state;
 - changes in the boundary of existing states;
 - a change in the name of a state.

Powers of the President

Legislative powers

- Legislative provisions relating to fundamental rights of the citizens of India require the President's consent;
- President's consent is mandatory in cases of money bill originating in Lok Sabha;
- President's consent is necessary for all the bills passed by the Parliament to become a law;
- President is empowered to promulgate ordinances when the Parliament is not in session;
- President also nominates the members of both the Houses.

Powers of the President

Financial Roles

- President receives reports of the Finance Commission and acts on its report.
- The Contingency Funds of India are at the disposal of the President.
- He also causes the presentation of audits in the Parliament.

Judicial powers

The President enjoys the following privileges as his judicial powers:

- He can rectify the judicial errors;
- He exercises the power of grant of pardons and reprieves of punishments;
- President can seek the advice of Supreme Courts on:

Legal matters,

Constitutional matter,

Matters of national importance

Powers of the President

Ordinance making power of the President: **Article 123**

Article 123 talks about the presidential powers to promulgate ordinances. An ordinance can be promulgated if:

- neither of the House of the Parliament is in session;
- and the President feels a need for immediate action.

The ordinance which is promulgated by the President will have the same effect as that of an act or law of the Parliament.

The essential conditions to be met by an ordinance are:

- It shall be presented before both the Houses of Parliament for passing when it comes to the session;
- The ordinance shall cease to operate six weeks after the date of reassembling of the parliament;

Constitutional Law, Cyber Law and Professional Ethics

Union Executive- President



Powers of the President

Ordinance making power of the President: **Article 123**

- The ordinance may also expire if the resolutions disapproving it are passed by both the Houses of Parliament;
- It can be withdrawn at any time by the President;
- The ordinance must be in consonance to the Constitution of India else it shall be declared void.

Powers of the President

Pardoning power of the President: Article 72

Article 72, provides for the provisions relating to the pardoning powers of the President. President can grant pardons, reprieves, respites, or remissions of punishments or remit suspend or commute the sentence given to a person by the court in the following cases:

- When the sentence is granted through a court-martial;
- When the sentence or punishment is given for offence of violation of any law relating to matters that fall in the ambit of Union's executive powers;
- When a death sentence is passed by a court.

Constitutional Law, Cyber Law and Professional Ethics

Union Executive- President



Powers of the President

Pardoning power of the President: Article 72

A *pardon* completely absolves the offender from all sentences and punishments and disqualifications and places him in the same position as if he had never committed the offence.

Reprise means temporary suspension of death sentence, e.g., pending a proceeding for pardon or commutation.

Respite means awarding a lesser punishment on some special grounds e.g., the pregnancy of a woman offender.

Remission means reduction of the amount of sentence without changing its character, e.g. a sentence of one year may be remitted to 6 months.

Constitutional Law, Cyber Law and Professional Ethics

Union Executive- President



Powers of the President

Pardoning power of the President: Article 72

Commutation means exchange of one thing for another. It means substitution of one form of punishment for another of a lighter character, eg for rigorous imprisonment to simple imprisonment.

Powers of the President

Emergency power of the President - 352

Article 352 of the Constitution of India grants President, three kinds of emergency powers as well:

- When a National Emergency is declared in case of external aggression or internal armed rebellion, the President holds the powers to declare a state of emergency. Thus the President's rule gets established in the country. However, the prime minister and the Council of Ministers must recommend such an emergency;
- When there exists a constitutional or law and order breakdown situation in a state, the President may declare a state of emergency in such cases. The state would then come under Governor's rule;

Constitutional Law, Cyber Law and Professional Ethics

Union Executive- President



Powers of the President

Emergency power of the President - 352

Whenever the financial stability of the nation or any country is seriously affected, the President has the right to intervene and direct the state to check and maintain public expenditure.

Constitutional Law, Cyber Law and Professional Ethics

Union Executive



Vice-President - Article 63

- There is a Vice-President of India [Article 63]
- The Vice-President is the ex-officio Chairman of the Rajya Sabha
- He acts as the President of India in case of death removal or resignation of the President of India.
- Even if the President is unable to exercise his duties due to illness, absence or any other cause, the Vice-President can officiate any duties of the President.
- During such tenures, the Vice-President is eligible to salaries, allowances that are payable to the President and ceases to be the Chairman of the Rajya Sabha

Constitutional Law, Cyber Law and Professional Ethics

Union Executive



Vice-President – Article 63

The Parliament enacted the **President (Discharge of Functions) Act 1969** by virtue of powers vested in the Parliament under article 70. In the absence of the President and the Vice- President the Chief Justice of India or the senior most Supreme court judge shall act as President till the new President takes office.

The Vice President (Article 63): Article 63 talks about the vice president of India.

Functions of the Vice-President

There are some important functions and duties to be performed by the Vice-President of India. Article 64 and Article 65 of the Indian constitution talks about the following functions:

Constitutional Law, Cyber Law and Professional Ethics

Union Executive



Vice-President - Article 63

- The Vice-President is the ex-officio **Chairman of Rajya Sabha**(the Council of States);
- The Vice President casts his **vote in case of a tie in Rajya Sabha**;
- The Vice President **represents the Council of States** on ceremonial occasions;
- He **protects the rights and privileges** of the members of the Rajya Sabha;
- He **travels, for goodwill missions**, to foreign countries;
- The Vice-President shall **perform the functions of President**, in cases where the President is not able to perform his functions due to absence or illness etc until the President resumes his duty;

Constitutional Law, Cyber Law and Professional Ethics

Union Executive



Vice-President - Article 63

- The **Vice-President shall act as President**, If the vacancy is created for the post of President due to his resignation, removal, and death or otherwise until a new President is elected;
- The period between the Vice-President acting as the President and the election of a new President can be **extended for a maximum period of six months.**

Constitutional Law, Cyber Law and Professional Ethics

Union Executive



Vice-President - Article 63

Qualification:

He must be a

- Citizen of India
- 35 years
- He should not be member of either house of the parliament
- Qualified to be a member of the Rajya Sabha
- Should not hold any office of profit under Central Government, State Government, local or other authority.
[Art.66(4)]
- The candidate for the post of VP must be proposed by 20 voters and must be seconded by 20 voters.

Election of the Vice President (Article 66)

- Electoral College[members of both houses of parliament] of all MP's in accordance with the system of proportional representation by means of single transferable vote and voting at such election shall be secret ballot.
- Jurisdiction of Supreme Court under article 71(1).
- If the election is declared as void, then whatever that was done by him is sustained.
- Vacancies in seats shall not be a reason for invalidating the election
- Election has to be conducted during the term of the previous term gets over. [Article 68(1)]
- If the seat falls vacant, election is to be conducted Immediately. [Article 68(2)]

Constitutional Law, Cyber Law and Professional Ethics

Union Executive



Other Conditions of the Office

- Oath before the President [Article 69]
- Cannot hold an office of profit [Article 64]
- He cannot be an MP or MLA, in case he is elected as Vice president, it is deemed that the seat to the Legislative body is vacated. [Article 66(2)]
- Allowances as decided by the Second Schedule. [Article 97]

Tenure of Office (Article 67)

- 5 years
- Shall continue until successor enters office
- Resignation to the President. [Resignation of President- to Vice President who shall be bound to inform the Speaker of Lok Sabha]
- Removal – Resolution of the Rajya Sabha passed by absolute Majority of total membership and agreed to by the Lok Sabha by simple majority. Prior notice of 14 days to be served. No inquiry is required for removal of Vice-President.

Council of Ministers to aid and advice President

Article 74. Council of Ministers to aid and advice President

(1) There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice:

Provided that the President may request the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration.

(2) The question whether, any, and if so what, **advice was tendered by Ministers to the President shall not be inquired into in any court.**

Council of Ministers to aid and advice President

The Council of Ministers

Article 74 of the Indian constitution states that:

- There should be a Council of Ministers to aid and advise the president;
- The Council of Ministers must have a Prime Minister at the head to aid and advise the President;
- The President should exercise his functions and act in accordance with advice rendered by the Council of Ministers;
- The Council of Ministers should reconsider any advice sent back by the President;
- The President is bound to act in accordance with the advice tendered by the Council, after reconsideration.

- The executive powers in India are exercised by the Council of Ministers. These ministers constitute ministries having cabinet minister, junior minister, etc. Before 2003, the size of ministries was not specified under any provision leading to a lot of chaos.
- After the 91st amendment Act of 2003 came into existence, it marked a ceiling limit to the size of the ministries. The amendment stated that the strength of the Council of Ministers cannot exceed more than 15% of the total number of members of the Lok sabha or relevant Legislative Assembly of the state.
- An exception was provided to the smaller states like Sikkim, Mizoram, and Goa, having a strength of lesser than 40 members in the legislative assemblies.

Council of Minister consistent of 3 different categories of Minister

- **Cabinets ministers:** The cabinet ranks Minister are the head of their department. They attend the cabinet meeting as a matter of right however, a person can be appointed cabinet minister without a portfolio. The 44th constitution amendment act (1978) has confirmed constitution status on the cabinet minister.
- **Minister of state:** The minister of state is formally of cabinet Status and are paid the same salary as the cabinet minister and they hold independent charge of their department but they attend the cabinet meeting only when invited.
- **Deputy ministers:** The deputy ministers work under the minister of state and have no separate charge of a department. They get a lesser salary than the minister of state or cabinet minister. They assist the Minister in charge of a department or minister and take no part in cabinet.

Disqualification on defection on the ground of split in a political party

1) Disqualification on defection on the ground of split in a political party

Article 102(2) and Article 191(2) provides for Anti-Defection laws regarding the members of Lok Sabha. According to this law, a member of a House, belonging to any political party, shall be disqualified as a member of the House on the following basis-

- If the person voluntarily gives up his/her membership of the political party to which he/she belongs; or
- If the person votes or abstains from voting in contrary to any direction issued by the political party or by any person or authority authorized to give directions.

Disqualification on defection on the ground of split in a political party

- In either case, the prior permission of such political party, person or authority must be sought. The voting or abstention must be approved by the political party, person or authority within fifteen days from the date of voting or abstention.
- When a member of a House claims that he and any other members of his party have formed a group representing a faction emerging as a result of a split in his original political party. If such a group consists of one-third or more of the members of such a political party then the ministers cannot be disqualified under Anti-Defection laws.

Article 75. Other provisions as to Ministers

- (1) The Prime Minister shall be appointed by the President and other Ministers shall be appointed by the President on the advice of the Prime Minister.
- (1A) The total number of Ministers including the Prime Minister, in the Council of Ministers shall not exceed fifteen percent, of the total number of members of the House of the People.
- (1B) A member of either House of Parliament belonging to any political party who is disqualified for being a member of that House under paragraph 2 of the Tenth Schedule shall also be disqualified to be appointed as a Minister under clause (1) for duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or where he contests any election to either House of Parliament before the expiry of such period, till the date on which he is declared elected whichever is earlier.

Article 75. Other provisions as to Ministers

- (2) The Ministers shall hold office during the **pleasure of the President**.
- (3) The Council of Ministers shall be **collectively responsible** to the House of the People.
- (4) Before a Minister enters upon his office, the President shall administer to him the **oaths of office and of secrecy** according to the forms set out for the purpose in the Third Schedule.
- (5) A Minister who for any period of **six consecutive months** is not a member of either House of Parliament shall at the expiration of that period cease to be a Minister.
- (6) The **salaries and allowances** of Ministers shall be such as Parliament may from time-to-time by law determine and, until Parliament so determines, shall be as specified in the Second Schedule.

Collective Responsibility

Article 75(3) Our Constitution clearly states that "*The Council of Ministers shall be collectively responsible to 'House of the People'*". It means that the Ministers are responsible to the Lok Sabha collectively.

The essence of collective responsibility is that, 'the Minister must vote with the government, speak in defense of it if the Prime Minister insists, and he/she cannot afterwards reject criticism of his act, either in Parliament or in the constituencies, on the ground that he/she did not agree with the decision.' This responsibility has two implications.

1. It means that every member of the Council of ministers accepts responsibility for each and every decision of the Cabinet. When a decision has been taken by the Cabinet, every Minister has to stand by it. If a Minister does not agree with the Cabinet decision, the only alternative left to him/her is to resign from the Council of Ministers.

Collective Responsibility

2. Also the vote of no-confidence against the Prime Minister is a vote against the whole Council of Ministers. Similarly, adverse vote in the Lok Sabha on any government bill or budget implies lack of confidence in the entire Council of Ministers, not only the mover of the bill.

Minister's Individual responsibility

- Though the Ministers are collectively responsible to the Lok Sabha, they shall **be individually responsible to the Head of the State** i.e., President.
- Article 75(2) declares that the Ministers shall be liable to be removed by the President at any time.
- However, since the President has to act on the advice of the Prime Minister, in practice, this power is exercised by the Prime Minister. The Prime Minister asks the Minister to resign.

Eligibility for being a Union Minister

- In order to be a Minister, a person has to be a member of either of the two Houses of Parliament.
- However, even if a person is not a member of any of the two Houses, he can become a Minister for a period of six months.
- Within **six months** the Minister has to get himself/herself elected to either House of Parliament, failing which he/she ceases to be a Minister.

Dissolution of Parliament

In our country, the Lok Sabha has a five-year term but it can be dissolved earlier.

Article 83(2) of the Indian Constitution states that at the completion of five years term, from the starting date of Lok Sabha meetings, it can be dissolved. In such cases, an election is held to elect the new Members of Parliament.

According to 85(b) The Lok Sabha can also be dissolved by the President on the advice of the Prime Minister before the expiry of its term.

The President can also dissolve the Lok Sabha, if he feels that a viable government cannot be formed, after the resignation or fall of a regime, as the case may be.

A non-member can become a Minister

Article 75 of the Constitution of India provides for provisions relating to the appointment of the Union Ministers.

At first, the Prime Minister is appointed by the President and then the President appoints other ministers on the advice of the Prime Minister.

The provision clearly states that any minister, **who is not a member** of either House of the Parliament, **shall cease to be a minister after the period of six months from the date of his appointment.**

The non-member must get elected to either House of the Parliament in order to continue as a Minister of Lok Sabha.

A non-member can become a Minister

A **convicted person** cannot be appointed Chief Minister

When the question arose whether a convicted can be appointed as Chief Minister or not.

The issue was decided in the negative by the Supreme Court in the famous case known as Ms. J. Jayalalitha Case. It was held that any person who is convicted for a criminal offence and sentenced to imprisonment, for a period of two years, or more, cannot be appointed the Chief Minister of any State under Article 164(1) of the Indian Constitution.

- The state executive is made up of the Governor, Chief Minister, Council of Ministers, and Advocate-General of State.
- Article 153-167
- The pattern of the Government in the State is the same as that for the union i.e., Parliamentary system.
- The Constitution of India by article 153, creates the office of the Governor. Thus each State shall have a Governor. The executive power of the State is vested in the Governor.
- He shall exercise the executive power either directly or through officers subordinate to him. The expression "officers subordinate to him" include a Minister of the State.
- **Governor:** constitutional - union government nominates Governor in each state.
- The Governor of - appointed by the President
- The same person can be appointed as Governor of one or more States

Qualifications:

- ❖ must be a **citizen of India**; and
- ❖ must have completed the age of **35 years**.
- **Must not belong to the state where he is appointed** and
- **Consult the Chief Minister of the state where to be appointed.**

Conditions of Governor's Office

- The Governor must not be a member of either House of Parliament and House of the Legislature of any State.
- He shall not hold any other office of profit. (Article 158)
- The salary and allowances of the Governor cannot be reduced during his term of office [article 158(4)].
- The Governor is required to take an oath or affirmation in the presence of the Chief Justice of the High Court or if he is not present, in the presence of the senior-most Judge of the High Court.[Article 159]

How can the Governor be removed from his office? Tenure and removal (A.156)

1. The Governor shall hold office during the pleasure of the President.
2. The Governor may, by writing under his hand addressed to the President, resign his office.
3. Subject to the foregoing provisions of this Article, a Governor shall hold office for a term of five years from the date on which he enters upon his office.
4. Provided that a Governor shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

State Executive- Governor's powers and functions

- ❖ He appoints the Chief Minister and on his advice the other Minister.
- ❖ He also appoints the Advocate- General of the State and the members of the State Public Service Commission.
- ❖ He also appoints the State Election Commission (Article 243K) and the State Finance Commission (Article 243K).

CHIEF MINISTER:

- ❖ The leader of the political party that gets the majority of the votes - appointed as the Chief Minister of the state.
- ❖ In case, no party gets a majority - Governor gets to use his discretion and appoint a Chief Minister.

Constitutional Law, Cyber Law and Professional Ethics

State Executive- Chief Minister and Council of Ministers



- ❖ Criteria : 1) **25 years** minimum age and
2) The Chief Minister takes oath in presence of the Governor
- ❖ **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
- The Chief Minister can reconstruct his Ministry and the right to demand the resignation of any of the ministers under him.
- The chief minister also controls the agenda for the Cabinet meetings.

Constitutional Law, Cyber Law and Professional Ethics

State Executive- Chief Minister and Council of Ministers



- ❖ **Aids and Advises the Governor-** The decisions of the council of ministers are communicated to the governor by the Chief Minister.

- ❖ **Leader of the House-** Makes all the announcements concerning the new or amended policies.

Constitutional Law, Cyber Law and Professional Ethics

State Executive- Chief Minister and Council of Ministers



Article 163(1) says that there shall be a Council of Ministers with the Chief Minister as the head to "aid and advise" the Governor in exercise of his functions. The Council of Ministers in the States is constituted and functions in the same way as the Cabinet.

91st Amendment, 2003

- This amendment has added two new clauses 1A and 1B to article 164 of the Constitution. The amendment makes two important changes.

Constitutional Law, Cyber Law and Professional Ethics

State Executive- Chief Minister and Council of Ministers



Article 163(1) says that there shall be a Council of Ministers with the Chief Minister as the head to "aid and advise" the Governor in exercise of his functions. The Council of Ministers in the States is constituted and functions in the same way as the Cabinet.

91st Amendment, 2003

- This amendment has added two new clauses 1A and 1B to article 164 of the Constitution. The amendment makes two important changes.

Maximum size of Ministers

The new clause (1A) puts a maximum limit of number of Ministers to be appointed to the Council of Ministers. It provides that the total number of Ministers, including the Chief Minister in the Council of Ministers in a State shall not exceed 15 percent 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 12 for smaller States. In those States where the total number of Ministers is more than 15% at the time of the commencement of the 91st Amendment Act, 2003 it shall be reduced to 15 percent with 6 months from the date on which the President notifies the date for application of the amendment.

Constitutional Law, Cyber Law and Professional Ethics

State Executive- Chief Minister and Council of Ministers

Disqualification on ground of defection

The new clause (1B) provides that where the **1/3 members of the original political party defect** from the party their membership of the legislature will automatically come to an end. Such a member cannot be appointed as a Minister.

Relationship between the Governor and Council of Ministers

- In general, the relation between the Governor and his Ministers is the same as that between the President and his Ministers, with this important difference that while the Constitution does not empower the President to exercise any function it authorises the Governor to exercise some function 'in his discretion'.
- Article 163 says that there shall be a Council of Ministers with the Chief Minister as the head to aid and advise the Governor. The exercise of his functions, except insofar as he is by or under the Constitution required to exercise his functions on his discretion.

In the following circumstances the Governor will be called upon to exercise his discretion-

- a) Appointment of the Chief Minister,
- b) the dismissing of a Minister,
- c) the dissolution of Legislative Assembly,
- d) advising the President for the proclamation of an emergency under article 356 of the Constitution.

Constitutional Law, Cyber Law and Professional Ethics

State Executive- Chief Minister and Council of Ministers

The powers and functions of Chief Minister are as follows:

- **To Aid and Advice the Governor:** The Chief Minister is the link between the Cabinet and the Governor. It is he who communicates to the Governor all decisions of the Council of Ministers. He has to furnish such information relating to the administration of the State as the Governor may call for.
- The Governor can submit to the consideration of the Council of Ministers any matter on which decision has been taken by a Minister but which has not been considered by the Council of Ministers.
- **2. The Chief Minister is at the Head of the Council of Ministers:** As Head of the State Cabinet, the Chief Minister enjoys the following powers:

Constitutional Law, Cyber Law and Professional Ethics

State Executive- Chief Minister and Council of Ministers



The powers and functions of Chief Minister are as follows:

i) **Formation of the Ministry:** The other Ministers are appointed by the Governor on the advice of the Chief Minister. The Chief Minister has a free hand in preparing the list of his colleagues. The Governor may suggest the names of the persons to be included in the Ministry, but he cannot insist upon any person to be included in the Ministry. Assigning departments or portfolios to the Ministers is done by the Governor on the advice of the CM. The CM can allocate and reshuffles portfolios among ministers.

Constitutional Law, Cyber Law and Professional Ethics

State Executive- Chief Minister and Council of Ministers

The powers and functions of Chief Minister are as follows:

Other than this the CM has the following important powers;

1. The activities of all ministers are coordinated, guided and controlled by the chief minister.
2. The meetings of the council of ministers are presided by him
3. He influences the decision of the council of ministers.
4. He can ask the governor to dismiss any minister or he can ask a minister to resign.
5. If the chief minister resigns that the government also collapses.
6. He is the channel of communication between the council of ministers and the governor.
7. The government policies are announced by him in the floor of the house.

Constitutional Law, Cyber Law and Professional Ethics

State Executive- Chief Minister and Council of Ministers

The powers and functions of Chief Minister are as follows:

Other than this the CM has the following important powers;

8. He advices the governor to summon the sessions of the state legislature.
9. Chairman of the state planning board
10. Member of the Inter State Council and the National Development Council both headed by the prime minister.
11. Vice chairman of the concerned zonal council by rotation.
12. Crisis manager in chief at political level during emergencies.

- Indian Parliament consists of **Lok Sabha** [The House of the People], **Rajya Sabha**[The council of States], and the **President of India**.
- At the state level, the legislature is composed of the **Legislative Assembly** [Vidhana Sabha-lower house] and **Legislative Council** [Vidhana Parishad- upper house] and the **Governor of the State**.
- **Constitution of the Parliament** : India has chosen the **parliamentary form of government** with the head of the state as an elected person. Therefore, it is a Parliamentary republic.
- **The pattern of Bicameralism is also followed wherein there are two houses.**

Constitutional Law, Cyber Law and Professional Ethics

Parliament and State Legislature

Though the practice of Bicameralism is a practice that was followed in the UK, India chose to follow the pattern that was followed by the USA. In the UK the two houses are the House of Lords and the House of Commons in which **the House of Lords is a body that represents the nobility (referred to as peerage)** who contributed to the stability in the UK when there was a monarchy and subsequently. Peerages are either inherited or otherwise they are enjoyed for life. **The House of Commons consists of elected representatives from territorial constituencies.**

- In the USA, both the **Senate and the House of Representatives** consist of elected members only.
- The Parliament is constituted under article 79 to include **the President, the Council of States (Rajya Sabha) and the House of the People (Lok Sabha).**

Legislative Assembly (Vidhana Sabha)

- According to Article 170, there should be a **Legislative Assembly** - can have at most 500 constituencies and at least 60 constituencies.
- These constituencies would be represented by the members who would be selected through the process of **direct election**.
- Article 172 - tenure of the Legislative - **5 years**.

Legislative Council (Vidhana Parishad)

- Article 171: The total members in the Legislative Council should not exceed one-third of the total members in the state Legislative Assembly. Elected from the district boards, municipalities and other local authorities which is specified by the Parliament according to law.

Qualifications of Membership: Article 173:

- Must be a citizen of India.
- The member of the Legislative Assembly should be more than 25 years. For being a member of the Legislative Council one should be more than 30 years.

Disqualifications of Membership

- Office of profit under the state or central government.
- unsound mind
- Discharged insolvent.
- Disqualified by the law of the Parliament.



CONSTITUTIONAL LAW, CYBER LAW AND PROFESSIONAL ETHICS

THANK YOU

Faculty of Law

