

## State Executive Powers and Constitutional Position of Governor, Chief Minister & Council of Minister, Advocate General

**Part VI** of the Constitution containing Articles 153 to 167 deals with the government in the States. The state executive consists of the Governor, the Chief Minister, the Council of Minister and the Advocate General of the state.

### # Governor

#### THE GOVERNOR

- The Governor is the constitutional head of the State Government.
- He plays a twofold function as the constitutional head of the State Government and as a link between the Centre and the state government.
- The Governor of a State is appointed by the President by warrant under his hand and seal.
- **Articles 153** says that there should be a Governor for each state. But under the **7th Amendment Act, 1956**, the same person can be appointed as Governor of one or more States.
- Qualifications: In order to be appointed as Governor, a person (**Article 157**)
  - Must be a citizen of India;
  - Must have completed the age of 35 years.
  - In addition, there are two conventions that have come to develop with regard to appointment of the Governor.
    - Must not belong to the state where he is appointed and
    - Consult the Chief Minister of the state where to be appointed
  - **Article 156** – Term of Office
    - Normally holds office for five years but can be removed at any time before that by the President.
    - Thus, Governors remain in office during the pleasure of the President.
  - The Governor may resign at any time by writing to the President.

#### Conditions of Office

- He cannot be a member of Lok Sabha and Rajya Sabha. If he has been a member of either of the house, he should vacate the seat on his first day as Governor in the office.
- He should not hold any office of profit.
- For his residence, Raj Bhavan is provided to him without the payment of rent.
- Parliament decides his emoluments, allowances and privileges.

- When a governor is responsible for two or more states, the emoluments and allowances payable to him are shared by the states in such proportion as the President may determine.
- Parliament cannot diminish his emoluments and allowances during his term of office.
- He is given immunity from any criminal proceedings, even in respect of his personal acts
- Arrest or imprisonment of Governor cannot take place. Only civil proceedings can be initiated for his personal acts that too after giving two months of prior notice.

## **Powers and Functions of Governor**

### **Executive Powers**

- Every executive action of the state government is taken in his name.
- How an order that has been taken up his name is to be authenticated, the rules for the same can be specified by the Governor.
- He may/may not make rules to simplify the transaction of business of the state government.
- Chief Ministers and other ministers of the states are appointed by him.
- He appoints the advocate general of states and determines their remuneration
- He appoints the following people:
  - State Election Commissioner
  - Chairman and Members of the State Public Service Commission
  - Vice-Chancellors of the universities in the state
- A constitutional emergency in the state is recommended to the President by him.
- The governor enjoys extensive executive powers as an agent of the President during the President's rule in the state.
- It is his responsibility to appoint Tribal Welfare Minister in the states of Chattisgarh, Jharkhand, Madhya Pradesh and Odisha.

### **Legislative Powers**

- **Article 174** – Power to prorogue the state legislature and dissolve the state legislative assemblies
- **Article 176** – He addresses the state legislature at the first session of every year
- If any bill is pending in the state legislature, Governor may/may not send a bill to the state legislature concerning the same
- If the speaker of the legislative assembly is absent and same is Deputy Speaker, then Governor appoints a person to preside over the session.

- Governor appoints 1/6th of the total members of the legislative council from the fields of – Literature, Science, Art, Cooperative Movement and Social Service.
- Governor nominates 1 member in state legislative assembly from Anglo-Indian Community.
- He can consult Election Commission for the disqualification of members
- **Article 200** – With respect to the bill introduced in the state legislature, he can:
  - Give his assent
  - Withhold his assent
  - Return the bill
  - **Article 201** – Reserve the bill for the President’s consideration (In instances where the bill introduced in the state legislature endangers the position of state High Court).

Governor can reserve the bill for the President’s consideration in the following cases When provisions mentioned in the bill:

- Violates the constitution (Ultra-Vires)
- Oppose Directive Principles of State Policy
- Hinders the larger interests of the country
- Concern the national importance
- Mention the acquisition of property that is dealt with Article 31A in the constitution.
- **Article 213** – An ordinance can be promulgated by him when either the Legislative Assembly or Council (Unicameral/Bicameral) are not in session.
- The following reports are laid by him:
  - State Finance Commission
  - State Public Service Commission
  - Comptroller and Auditor General (Concerning the state finance)

### **Financial Powers**

- He looks over the state budget being laid in the state legislature
- His recommendation is a prerequisite for the **introduction of money bill** in the state legislature
- He recommends for the demand for grants which otherwise cannot be given
- **Contingency Fund of State** is under him and he makes advances out that to meet unforeseen expenditure
- State Finance Commission is constituted every five years by him. (Read about Finance Commission of India in the linked article.)

## **Judicial Powers**

- President consults the Governor while appointing judges of High Court
- In consultation with state High Court, Governor makes appointments, postings and promotions of the district judges
- In consultation with the state high court and state public service commission, he also appoints persons to the judicial services.

## **Pardoning Power (ARTICLE 161)**

- Power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted in any offence against a state law.

### **DIFFERENCE BETWEEN PARDONING POWERS OF PRESIDENT AND GOVERNOR**

- The scope of the pardoning power of the President under **Article 72** is wider than the pardoning power of the Governor under **Article 161**. The power differs in the following two ways:
- The power of the President to grant pardon extends in cases where the punishment or sentence is by a **Court Martial** but Article 161 does not provide any such power to the Governor.
- The President can grant pardon in all cases where the sentence given is sentence of death but pardoning power of Governor does not extend to death sentence cases.

## **Constitutional Discretion of Governor**

Unlike the President of India, the Governor is conferred with explicit constitutional power to act at his own discretion in the following instances:

- When they have to reserve the bill for the consideration of the President of India, Governors can decide on their own without the advice of the Council of Ministers
- When he has to recommend for the President's rule in the state, he can act at his own discretion
- When he is given an additional charge as the administrator of the Union Territory, he can take actions at his own discretion
- When he has to determine the amount payable by the Government of Assam, Meghalaya, Tripura and Mizoram to an autonomous Tribal District Council as royalty accruing from licenses for mineral exploration
- When he calls upon the Chief Minister to seek information regarding administrative and legislative affairs

## **# Chief Minister**

### **CHIEF MINISTER**

The Governor is a state's de jure head, but de facto executive authority rests with the Chief Minister. So, Chief Minister is the real executive of the Government.

- **Article 164** of the Constitution says that the Chief Minister shall be appointed by the governor.
- Constitution does **not** specifically mention about the qualification to be appointed as Chief Minister (CM).
- He advises the Governor to appoint any person as a minister. It is only according to the advice of CM the Governor appoints ministers.
- Allocation and reshuffling of portfolios among ministers.
- In case of difference of opinion; he can ask minister to resign.
- Directs, guides and controls activities of all the ministers.
- He is the leader of the MLAs elected by the general public of the state.
- If the Chief Minister resigns then full cabinet has to resign.

**Article 167** – The Chief Minister acts as a **link between Governor and state council of ministers**. The functions with respect to the Governor are as follows:

- CM has to communicate to the Governor all the decisions of the council of ministers relating to the administration of the states.
- Whenever the Governor calls for any information relating to the decisions taken or regarding the administration, the CM has to provide him the same
- The Governor can ask for consideration of council of ministers when a decision has been taken without the consideration of the cabinet.
- CM advises Governor regarding the appointment of important officials like Attorney General, State Public Service Commission (Chairman and Members), and State Election Commission etc.

### **With Respect to State Legislature**

- All the policies are announced by him on the floor of the house.
- He recommends dissolution of legislative assembly to the Governor.
- He advises the Governor regarding summoning, proroguing the sessions of State Legislative Assembly from time to time.

### **Other Functions**

- At the ground level he is the authority to be in contact with the people regularly and know about their problems so as to bring about policies on the floor of the assembly.
- He acts as the **chairman of State Planning Commission**.
- He is the vice chairman of concerned zonal council in rotation for a period of one year.
- During emergencies he acts as the crisis manager in the state.

## Definition of Advocate General of State

The highest law officer of the states in India is called the Advocate General of State.

Some important points about the Advocate General of State in India, for UPSC, are:

1. In the Order of Precedence, Additional Solicitor General is above the Advocate General of State.
2. The right to be eligible for the post of Advocate General of State is conferred to only the Indian citizens, and foreigners are not eligible to hold this public office.
3. He has full right to appear in any court of the state.
4. He cannot vote in any proceedings of the houses of the state legislature or any committee initiated by the state legislature. He though has a right to speak and be a part of such proceedings.

## Appointment of Advocate General of State

### Who appoints the Advocate General of State?

The governor appoints the advocate general of state on the advice of the council of ministers of the state.. The person who is eligible to hold the office of advocate general in India must meet the following criteria:

1. He must be an Indian Citizen
2. He should be eligible to be appointed as the judge of the High Court; i.e. he must meet one of the following eligibility criteria:
  - A barrister having experience of more than 5 years.
  - A civil servant with an experience of more than 10 years along with an experience as a servant in Zila Court for at least 3 years.
  - A pleader over 10 years in any high court
3. He shouldn't be more than 62 years of age, as is the age qualification for a High Court Judge.

Read about Governor and High Court from the links below:

## Term and Removal of Advocate General of State

- The **Constitution does not fix the term of Advocate General in India**. He remains in the office during the pleasure of the Governor.
- The **Constitution does not contain the procedure and grounds to remove the Advocate General of State**. Governor can remove him/her at any point in time.
- **Resignation of Advocate General** – He can resign from the public office by submitting the resignation letter to the state governor.
- Conventionally, when a council of ministers of a state government resigns, the advocate general of state too puts down his papers.

## **Functions of Advocate General of State**

The major duties and functions of the Advocate General of State are mentioned below:

1. He is responsible to advise the state government on the legal matters that the governor refers to him.
2. He also has to perform all the duties legal characteristics as are assigned to him by the state governor.
3. He is bound by the Constitution for such duties and functions as is mentioned therein or any other constitutional law.

## **Salary of Advocate General of State**

The remuneration received by the Advocate General of State is not fixed by the Indian Constitution. It varies according to the states. State governor determines the salary of the advocate general in India.

Some current updates regarding the salary of Advocate General of States (November 2020):

- The salary of law officers in Punjab has been increased by the state government:
  1. Junior Most Law Officer/Assistant Advocate General – Rs. 55000/month
  2. Deputy Advocate General and Senior Deputy Advocate General – Rs. 90000/month
  3. Establishment officers – Rs. 40000/month
  4. Advocate General – Estimated to be Rs. 1.25 lakh/month

Note: There can be junior, deputy, and senior advocates general in an office of the state advocate general.

## **Difference between Advocate General and the Attorney General of India**

Article 76 of the Indian Constitution deals with the Attorney General of India, while Article 165 deals with the office of Advocate General of India.

The office of Advocate General of State corresponds with the office of Attorney General of India as the former is the chief law officer of the state and the latter is the highest law officer of India.

Legal matters of the state are referred to the Advocate General while the legal matters of the union or the central government are referred to the Attorney General of India.

## **Remember the Constitution Articles Related to Advocate General**

The list of articles related to the office of Advocate General of State are mentioned in the table below:

Articles	Details
Article 165	Office of Advocate General of State
Article 177	Rights of Advocate General of State w.r.t the state legislature and its proceedings
Article 194	Powers, privileges and immunities of Advocate General

Other related topics concerning Constitutional articles are mentioned below:

### List of Advocate General of State

The list of state-wise advocate general in India is given below:

State	Advocate General
Andhra Pradesh	Subrahmanyam Sriram
Arunachal Pradesh	Nilay Ananda Dutta*
Assam	Devajit Lon Saikia
Bihar	Lalit Kishore
Chhattisgarh	Satish Chandra Verma
Goa	Devidas Pangam



Gujarat	Kamal Trivedi
Haryana	Baldev Raj Mahajan
Himachal Pradesh	Ashok Sharma
Jharkhand	Rajiv Ranjan
Karnataka	Prabhuling K. Navadagi
Kerala	K Gopala Krishna Kurup
Madhya Pradesh	Prashant Singh
Maharashtra	Ashutosh Kumbhakoni
Manipur	Lenin Singh Hijam
Meghalaya	Amit Kumar
Mizoram	Diganta Das
Nagaland	K. N. Balagopal
Odisha	Ashok Parija
Punjab	Vinod Ghai

Rajasthan	Narpat Mal Lodha
Sikkim	Vivek Kohli
Tamil Nadu	Thiru R.Shunmugasundaram
Telangana	B. S. Prasad
Tripura	Siddhartha Shankar Dey
Uttar Pradesh	Ajay Kumar Mishra
Uttarakhand	S. N. Babulkar
West Bengal	Advocate SN Mookherjee

\*The Advocate General post for Arunachal Pradesh is vacant ever since Nilay Ananda Dutta passed away on September 19, 2021