

MODULE 4: Organs of Governance

The Governor

- Article 153 states that there shall be a Governor for each state.
- Under Article 154 the executive power of the State is vested in the Governor which can be exercised by him directly or through officers subordinate to him.
- The Governor is appointed by The President (Article 155) for a period of 5 years.
- Qualifications :
 - (i) must be a citizen of India
 - (ii) must have completed 35 years of age

The Governor

- Powers and functions :

(i) **Executive Power:** The Governor appoints the leader of the Legislative Assembly as the Chief Minister of the State and other ministers on the advice of the Chief Minister. He also appoints the Chairman and the Members of the State Public Service Commission. He acts as the agent of the Centre during the President's rule in the State.

(ii) **Legislative Powers:** The Governor summons, fixes the time and place of the sessions of the Legislative Assembly. He addresses the Legislative Assembly at the commencement of the session once in a year. All bills passed by the legislature must receive the Governor's assent to become an Act. He has the power to promulgate ordinances when the Assembly is not in session.

The Governor

- Powers and functions (contd.):

(iii) **Financial Powers:** The money bill can be introduced in the Assembly only on the recommendation of the Governor. The Contingency Fund of the State is kept at the disposal of the Governor and he can utilize it to meet any unforeseen expenditure pending authorization of the State Legislative Assembly.

President of India Vs Governor of State

While both the President of the Republic and the Governor of a State are constitutional heads, there are some fundamental differences

- while the President is elected; Governor is nominated
- while the President can be removed only by the difficult process of impeachment, the Governor holds office during the pleasure of the President.
- while the President is bound by the advice of the Council of Ministers in the discharge of all his functions, in the case of Governor the aid and advice provision applies “except in so far as” the Governor is required to function “in his discretion”.



Legislative Council

The Legislative Council is a permanent body. One-third of the members retire every two years. This means that a member gets a term of six years. The total strength of the Council should not exceed one-third of the members of the State Legislative Assembly.

Council of Ministers

- Article 163 provides for a Council of Ministers with a Chief Minister as its head to aid and advice the Governor in the exercise of his functions.
- The Governor appoints the leader of the majority party in the State Legislative Assembly as the Chief Minister (Article 164).
- The other ministers are appointed by the Governor on advice of the Chief Minister (Article 164).
- The Council of Ministers is collectively responsible to the Legislative Assembly.

THE SUPREME COURT

❖ Constitution of the Supreme Court (Article 124):

The Supreme Court of India stands at the apex of our federal judiciary. It consists of the Chief Justice of India and not less than 25 other Judges (vide Act 22 of 1986).

❖ Appointment of the Judges:

(i) Every Judge of the Supreme Court shall be appointed by the President after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose.

(ii) The Judges hold Office until he attains the age of 65.

(iii) The Chief Justice of India is appointed by the President with consultation with such Judges of the Supreme Court and of the High Courts as he may deem necessary.

(iv) A nine-judge Bench of the Supreme Court has laid down that the senior most Judge of the Supreme Court should be appointed to the Office of the Chief Justice of India.

(v) In case of the appointment of other Judges of the Supreme Court, consultation of the Chief Justice of India is obligatory.

THE SUPREME COURT

- ❖ Qualifications to be a Judge of the Supreme Court:
 - (i) a citizen of India
 - (ii) a distinguished jurist or has been a High Court Judge at least five years or has been an Advocate in a High Court for at least 10 years.
- ❖ A Judge of the Supreme Court can be removed by the President upon an address to that effect being passed by a special majority of each House of the Parliament of not less than two-thirds of the members of the House present and voting on the ground of misbehavior or incapacity.

POWERS AND FUNCTIONS OF SUPREME COURT

- **Original Jurisdiction (Article 131):**

The Supreme Court has original and exclusive jurisdiction in all disputes :

- (i) between the Government of India and one or more States
- (ii) between the Govt. of India and any State or States one side and one or more States on the other side
- (iii) between two or more States.

But such jurisdiction does not extend to a dispute arising out of any treaty, agreement, covenant, engagement, sanad or other similar instrument which was executed before the commencement of the Constitution writs in the nature of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari* for the enforcement of Fundamental Rights is sometimes treated as an “original jurisdiction”.

POWERS AND FUNCTIONS OF SUPREME COURT

- **Appellate Jurisdiction (Article 132) :**

An appeal shall lie to the Supreme Court from any judgement, decree or final order of a High Court whether in a civil. Criminal or other proceedings and that the case involves a substantial question of law as to interpret the Constitution. The Supreme Court has appellate jurisdiction in both Civil and Criminal matters.

(a) Appellate Jurisdiction in Civil cases : In civil cases an appeal can be filed in the Supreme Court if the High Court certifies that :

- (i) the case involves a substantial question of law of general importance, and
- (ii) in the opinion of the High Court the said question needs to be decided by the Supreme Court.

(b) Appellate Jurisdiction in Criminal cases: In criminal cases an appeal can be filed in the Supreme Court if the High Court concerned

- (i) has on appeal reversed an order of acquittal of an accused person and sentenced him to death;
- (ii) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial sentenced him to death;
- (iii) certifies that the case is fit one for appeal to the Supreme Court.

POWERS AND FUNCTIONS OF SUPREME COURT

❖ Appeal by Special Leave (Article 136) :

While the Constitution provides for regular appeals to the Supreme Court from decisions of High Court under Article 132-134, there may be cases the intervention of the Supreme Court appears to be necessary in the interest of justice, the Supreme Court may grant, in its discretion, a special leave for appeal from any judgement, decree or final order or sentence passed by any court or tribunal.

❖ Advisory jurisdiction (Article 143) :

Besides the regular jurisdiction of the Supreme Court, it has an advisory jurisdiction to give its opinion on any question of law or fact of public importance as may be referred to it for consideration by the President.

❖ Additional Jurisdiction (Article 138) :

The Supreme Court has further jurisdiction and power with respect to any of the matters in the Union List as Parliament may be law confer.

❖ Power to Review (Article 137) :

The Supreme Court has the power to review any judgement or order subject to any law passed by the Parliament in this regard.

CERTAIN IMPORTANT FEATURES

- The Supreme Court is considered as the guardian of the Constitution.
- It has been vested with wide range of power to declare any law passed by the Parliament and any action of the Union or State Government unconstitutional and hence inoperative on the ground that it contravenes the provisions of the Constitution.
- It is the final interpreter of the Constitution. This is possible as the Constitution has ensured the independence of judiciary.

HIGH COURTS

- Article 214 provides for a High Court for each state. There can be a High Court for number of states as in the North-Eastern states having one common High Court in Guwahati and one State like Uttar Pradesh having two one in Allahabad and the other in Lucknow.
- Every High Court, like the Supreme Court of India, is a Court of record.
- Appointment of Judges : Is appointed by the President of India by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State and in case of Judges other than the Chief Justice, the Chief Justice of the High Court concerned (Article 217).
- A High Court Judge hold Office until he attains the age of 62 years.

HIGH COURTS

❖ Qualifications :

- (i) a citizen of India
- (ii) has at least 10 years of experience as a judicial officer in the territory of India
- (iii) has for at least 10 years of experience as an advocate in a High Court.

❖ Independence of Judges : As in the case of the Supreme Court of India, the Constitution seeks to maintain the independence of Judges of the High Courts by a number of provisions

- (i) a Judge cannot be removed unless an address of each House of Parliament passed by a special majority to the President on the grounds of misbehaviour or incapacity
- (ii) expenditures in respect of salaries and allowances of the Judges to be charged from the Consolidated Fund of the State
- (iii) after retirement the Judges shall not plead or act in a Court or before any authority in India except Supreme Court and a High Court other than one in which he was a Judge.

JURISDICTION OF HIGH COURTS

- The High Court has appellate jurisdiction on both civil and criminal matters. The High Courts have a power of superintendence over all subordinate Courts and Tribunals throughout the territories of their jurisdiction.
- **Judicial Powers:** The Governor has the power to grant pardon and suspend, remit or commute sentences where the offence is under a law relating to matters within the executive competence of the State.

JURISDICTION OF HIGH COURTS

- **Discretionary Powers:** The Governor enjoys discretionary powers e.g.
 - (i) he determines whether the State Government is in a position to function in accordance to the provisions of the Constitution and whether there has been a breakdown of the constitutional machinery of the State and on that basis he makes report to the President under Article 356
 - (ii) If in the general election no single party is able to secure a clear majority or post election split has reduced the majority to minority, the Governor can use his own discretion to determine which party has the best chances to form a stable Government.
 - (iii) If no single party is not in a position to form a stable Government he can on his discretion dissolve the legislature and order fresh elections.
 - (iv) The Governor can reserve a Bill passed by the Legislature for consideration of the President.