

Judicial Functions:

- Appoints the Chief Justice and the judges of Supreme Court and high courts.
- Can seek advice from the Supreme Court on any question of law or fact. However, the advice tendered by the Supreme Court is not binding on the President.

Power to Pardon: Article 72 empowers the President to grant pardon, reprieve, respite or remission of punishment, or to suspend, remit or commute the sentence of any person convicted of any offence in all cases.

- **Reprieve** means stay of the execution of sentence.
- **Respite** denotes postponement of execution of a sentence.
- **Remission** reduces the amount of a sentence without changing its character and commutation is changing the sentence to a higher penalty of a different form.
- A **pardon** is an act of grace which **releases a person from punishment for some offence**. A pardon **may be either full, limited or conditional**. Full pardon wipes out the offence in the eyes of law; a limited pardon relieves the offender from some but not all the consequences of the guilt and a conditional pardon imposes some condition for the pardon to be effective.
- The President acts in this matter on the advice of the Home Minister.
- Offences relating to currency and coinage included in Ss. 489-A to 489-D of the Indian Penal Code are matters exclusively within the legislative competence of Parliament and the executive power of the Central Government extends to this matter Central, and not the State, Central Government is the appropriate Government competent to remit the sentence passed in relation to such offences.
- This doesn't cover the power to pardon the punishment which were granted for the contempt of court.

Legislative Functions:

1. Can summon or prorogue the Parliament and dissolve the Lok Sabha.
2. He can also summon a joint sitting of both the Houses of Parliament, which is presided over by the Speaker of the Lok Sabha.
3. Address the Parliament at the commencement of the first session after each general election and the first session of each year.
4. Can appoint any member of the Lok Sabha/RS to preside over its proceedings when the offices of both the Speaker and the Deputy Speaker fall vacant.
5. Nominates 12 members of the Rajya Sabha from amongst persons having special knowledge or practical experience in literature, science, art and social service.
6. Decides on questions as to disqualifications of members of the Parliament, in consultation with the Election Commission except Xth Schedule matters.
7. His prior recommendation or permission is needed to introduce certain types of bills in the Parliament. For example, a bill involving expenditure

from the Consolidated Fund of India, or a bill for the alteration of boundaries of states or creation of a new state.

8. He can promulgate ordinances when the Parliament is not in session. These ordinances must be approved by the Parliament within six weeks from its reassembly. He can also withdraw an ordinance at any time.
9. lays the reports of the Comptroller and Auditor General, Union Public Service Commission, Finance Commission, and others, before the Parliament.

Financial Powers:

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- lays the reports of the Comptroller and Auditor General, Union Public Service Commission, Finance Commission, and others, before the Parliament.

RULE MAKING Powers

- authentication of orders and instruments made and executed in the name of the President [Art. 77(2)]
- the more convenient transaction of the government's business [Art. 77(3)];
- conditions of services etc. of Audit and Accounts Department [Art. 148(5)], Chairman and Members of the Union and Joint Public Service Commissions [Art. 318], Secretariat and staff of Houses of Parliament [Art. 98(3)];
- consultation with the U.P.S.C. regarding appointment of officials of the Supreme Court [Art. 146(1)]
- dual membership of Parliament and State Legislatures [Art. 101(2)];
- procedure to be followed at the joint sittings of the two Houses of Parliament [Art. 118(3)];
- regulating the requirements and conditions of service of persons appointed to services and posts in connection with the affairs of the Union (Proviso to Art. 309).

Ordinance Making Powers:

An ordinance is only a temporary law. The executive in Britain or the U.S.A. enjoys no such power. Section 72 of the Government of India Act, 1935, authorised the Governor-General to make and promulgate ordinances for the peace and good government of British India 'in cases of emergency.

The technique of issuing an ordinance has been devised with a view to enabling the Executive to meet any unforeseen or urgent situation arising in the country

when Parliament is not in session, and which it cannot deal with under the ordinary law.

Article 123 empowers the President to promulgate such ordinances as the circumstances

appear to him to require when:

1. **both Houses of Parliament** are **not** in session
2. he is **satisfied that circumstances** exist which render it necessary for him to take immediate action

he acts in this matter, as he does in other matters, on the advice of the Council of Ministers.

the 38th Amendment of the Constitution had added Art. 123(4) making satisfaction of the President to issue an ordinance non-justiciable but later he 44th Amendment deleted this provision and restored the status quo ante.

The ordinance is to be laid before each House of Parliament when it reconvenes after the making of the ordinance. It shall **cease to operate at the expiry of six weeks** from the assembly of Parliament unless approved.

Period of six weeks is to be reckoned from the later of the two dates if both houses meet on different dates.

The ordinance comes into effect as soon as it is promulgated and the maximum duration for which an ordinance may last is **six months and six weeks**, as six months cannot intervene between two sessions of Parliament, and the ordinance would cease to operate six weeks after the Parliament meet.

An ordinance may cease to have effect even earlier than the prescribed six weeks, if both Houses of Parliament pass resolution disapproving it. **It may be withdrawn by the Executive at any time.**

Prime Minister ('Defacto' executive. head of the government)

- Constitution does not contain any specific procedure for the selection and appointment of the Prime Minister.
- Article 75 says only that the Prime Minister shall be appointed by the president.
- Conventionally leader of majority party in general elections; if none then leader of single largest party or coalition.
- In such a situation, the President usually appoints the leader of the largest party or coalition in the Lok Sabha as the Prime Minister and asks him to seek a vote of confidence in the House within a month.
- In 1997, the Supreme Court held that a person who is not a member of either House of Parliament can be appointed as Prime Minister for six months, within which, he should become a member of either House of Parliament; otherwise, he ceases to be the Prime Minister.

Functions of PM:

- **With Respect to council of Ministers:**
 - Recommends appointment of ministers.
 - Allocates and re-shuffles portfolios.
 - Can ask minister to resign or recommend to president to remove him.
 - Presides over the meetings of Council of Ministers.
 - If he resigns all Council has to resign
- **With Respect to President**
 - communicate to the President all decisions of the council of ministers.
 - furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call
 - advises the president with regard to the appointment of important officials like attorney general of India, Comptroller and Auditor General of India, chairman and members of the UPSC, election commissioners, chairman and members of the finance commission and so on.
- **With Respect to Parliament:**
 - He advises the President with regard to summoning and proroguing of the sessions of the Parliament.
 - He can recommend dissolution of the Lok Sabha to President at any time.
 - He announces government policies on the floor of the House.
- **Other powers and Functions**
 - He is the chairman of the NITI Ayog (which succeeded the planning commission), National Integration Council, Interstate Council, National Water Resources Council and some other bodies.
 - He plays a significant role in shaping the foreign policy of the country.
 - He is the chief spokesman of the Union government.
 - He is the crisis manager-in-chief at the political level during emergencies.
 - As a leader of the nation, he meets various sections of people in different states and receives memoranda from them regarding their problems, and so on.
 - He is leader of the party in power.
 - He is political head of the services.

Central Council of Ministers

- Article 74 deals with the status of the council of ministers while Article 75 deals with the appointment, tenure, responsibility, qualification, oath and salaries and allowances of the ministers.
- The **Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister.**
- The total number of ministers, including the Prime Minister, in the Council of Ministers **shall not exceed 15%** of the total strength of the Lok Sabha. This was added by 91st Constitutional Amendment Act, 2003
- A member of either house of Parliament 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.

- The ministers shall hold office during the pleasure of the President.
- The council of ministers shall be collectively responsible to the Lok Sabha.
- The salaries and allowances of ministers shall be determined by the Parliament.
- Every minister shall have the right to speak and take part in the proceedings of either House, any joint sitting of the Houses and any Committee of Parliament of which he may be named a member. But he shall be entitled to vote only in the house he is member of.

PERMANENT EXECUTIVE: BUREAUCRACY (described as civil service)- (Role of Civil Services in Democracy will be discussed in detail during classes on Governance)

- The bureaucracy is an instrument through which welfare policies of the government must reach the people.
- In the parliamentary system, the legislature also exercises control over the administration. The administrative officers cannot act in violation of the policies adopted by the legislature.
- The bureaucracy is also expected to be politically neutral.
- Indian bureaucracy today is an enormously complex system. It consists of the All-India services, State services, employees of the local governments, and technical and managerial staff running public sector undertakings.
- Makers of our Constitution were aware of the importance of the non-partisan and professional. **So, the Union Public Service Commission has been entrusted with the task of conducting the process of recruitment of the civil servants for the government of India.**

Question 29 “Though the constitution prescribes a scheme where parliament is controlling the executive while in practice it has become otherwise i.e. executive controlling the parliament”. Critically Examine the statements. (Do be discussed in class)



The state executive consists of the

- governor,
- the chief minister,
- the council of ministers and
- the advocate general of the state

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.

When the same person is appointed as the governor of two or more states, the emoluments and allowances payable to him are shared by the states in such proportion as determined by the president.

Appointment of Governor

- neither directly elected by the people nor indirectly elected.
- appointed by the president by warrant under his hand and seal.
- In a way, he is a nominee of the Central government.
- But, as held by the Supreme Court in 1979, the office of governor of a state is not an employment under the Central government.

Qualification:

- 35 Years of age
- Citizen of India

Immunity to Governor:

- He enjoys personal **immunity from legal liability for his official acts.**
- During his term of office, he is **immune from any criminal proceedings.**
- **Civil Proceeding can be started, but only after giving 60 days' notice.**

A governor holds office for a term of five years from the date on which he enters upon his office.

However, this term of five years is subject to the pleasure of the President.

Further, he can resign at any time by addressing a resignation letter to the President.

The governor has no security of tenure and no fixed term of office. He may be removed by the President at any time.

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

Other Conditions of Office of Governor:

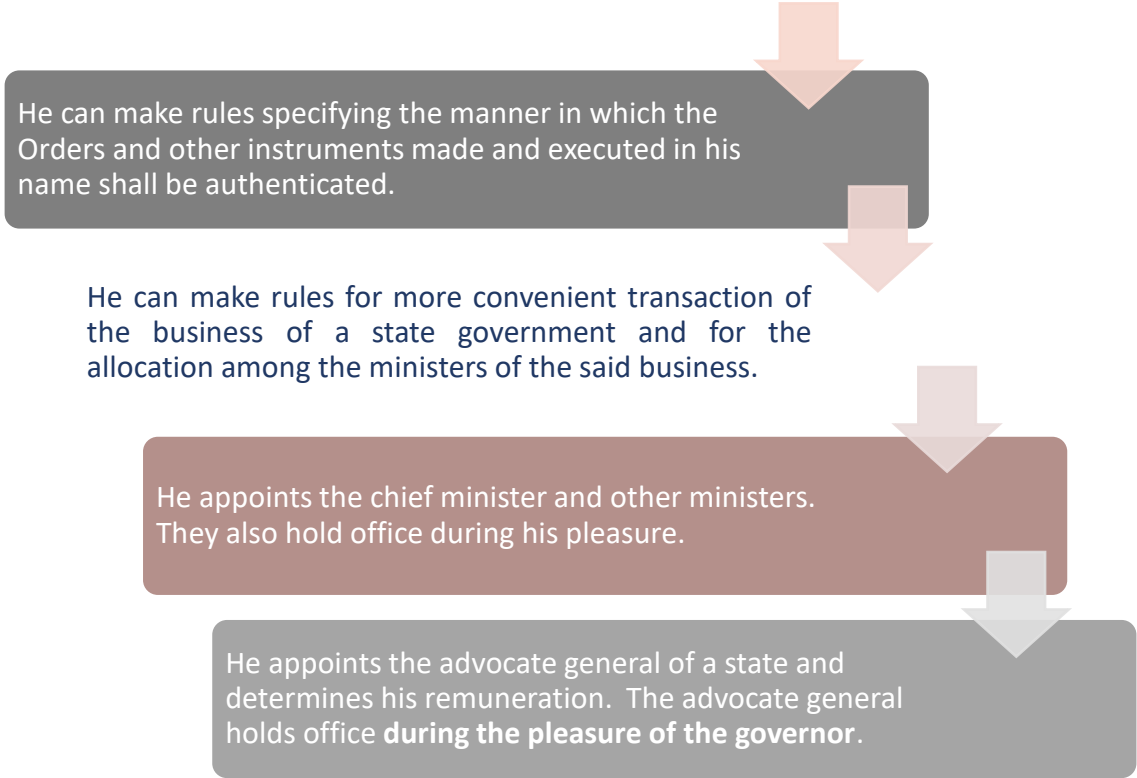
- The Governor shall not be a member of either House of Parliament or of a House of the Legislature. If a member of either House of Parliament or of a House of the Legislature of any such State be appointed Governor, he shall be deemed to have vacated his seat from date of appointment.
- Shall not hold any other office of profit.

- The emoluments and allowances of the Governor shall not be diminished during his term of office.

Oath: make and subscribe in the presence of the Chief Justice of the High Court and in his absence senior most available judge of that High Court.

Executive Powers:

All executive actions of the government of a state are formally taken in his name.



He can make rules specifying the manner in which the Orders and other instruments made and executed in his name shall be authenticated.

He can make rules for more convenient transaction of the business of a state government and for the allocation among the ministers of the said business.

He appoints the chief minister and other ministers. They also hold office during his pleasure.

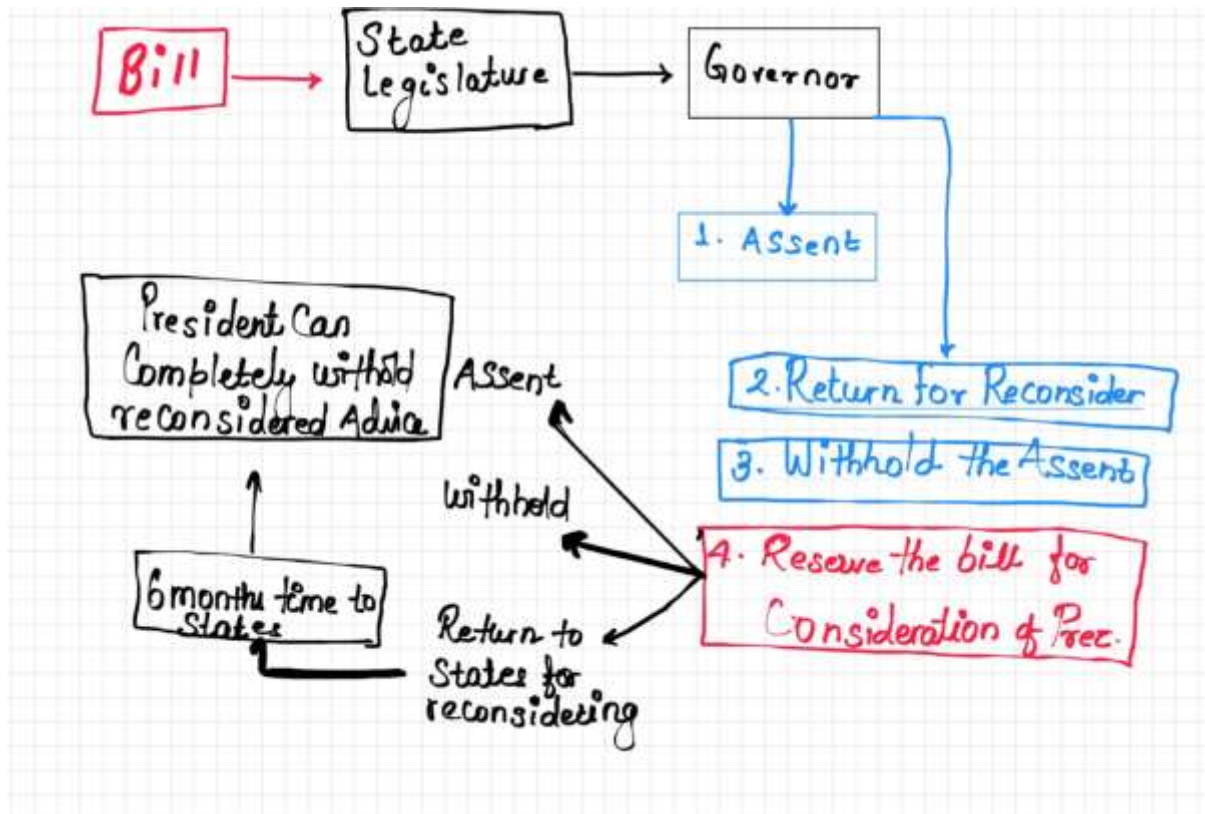
He appoints the advocate general of a state and determines his remuneration. The advocate general holds office **during the pleasure of the governor**.

- He appoints the state election commissioner and determines his conditions of service and tenure of office. However, the state election commissioner can be removed **only in like manner and on the like grounds as a judge of a high court**.
- He appoints the chairman and members of the state public service commission. However, **they can be removed only by the president and not by a governor**.
- 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 by or under this Constitution required to act in his discretion

Legislative Powers:

- He can summon or prorogue the state legislature and dissolve the state legislative assembly.

- He can address the state legislature at the commencement of the first session after each general election and the first session of each year.
- He can send messages to the house or houses of the state legislature, with respect to a bill pending in the legislature or otherwise.
- He can appoint any member of the State legislative assembly to preside over its proceedings when the offices of both the Speaker and the Deputy Speaker fall vacant.
- 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 decides on the question of disqualification of members of the state legislature in consultation with the Election Commission.



What have been the friction points between Government and Governor?

In recent years, these have been largely about the selection of the party to form a government, deadline for proving majority, sitting on Bills, and passing negative remarks on the state administration.

Recently, In November 2019, after a hung verdict in Maharashtra, Governor Bhagat Singh Koshiyari quietly invited BJP leader Devendra Fadnavis and administered him oath as CM. This government lasted just 80 hours. Six months later, Koshiyari refused to nominate CM Uddhav Thackeray to the Legislative Council, leading Thackeray to meet PM Narendra Modi to resolve the issue.

In December 2020, Kerala Governor Arif Mohammed Khan turned down a request to summon a special sitting of the Assembly to debate the three central farm laws. Again the similar act was done in Rajasthan in 2022.

In recent years, there has been a grave erosion of constitutional provisions, constitutional morality, and constitutional ethos being witnessed among various constitutional bodies. If the manner of functioning by institutions such as the Election Commission of India and the Comptroller and Auditor General of India has left much to be desired, the conduct of the Governors of some States has made a complete mockery of the Constitution and its limitations.

A Constitution Bench of the Supreme Court laid down in *Shamsher Singh vs State of Punjab and Anr.* (1974) that the President and Governor shall “exercise their formal **constitutional powers only upon and in accordance with the advice of their Ministers save in a few well-known exceptional situations**. *Wherever the constitution requires satisfaction of the President or the Governor for the exercise of any power or function by the President or the Governor, as the case may be, as for example in Articles 123, 213, 311(2) proviso (c), 317, 352(1), 356 and 360. The satisfaction required by the Constitution is the satisfaction of the President or of the Governor in the Constitutional sense under the Cabinet system of the Government*”. Yet, there is the extraordinary situation of some Governors not acting upon requests to grant clemency or assent to Bills; and, in one instance in Tamil Nadu, a reluctance to reserve for the President’s consideration a Bill that expressly requires Presidential assent because of obvious conflict with a central law. Much of the conflict arises due to the Constitution itself. It fixes no time-frame for the Governors to act, and contains, in Article 163, an unusual power to choose what is in their discretion and what is not, with the courts being barred from inquiring into whether any advice and, if so, what advice was given.

The makers of the Constitution of India did not anticipate that the office of the Governor, meant to “preserve, protect and defend the Constitution and the law”, would metamorphose into the most controversial constitutional office rendering the constitutional praxis rugged.

Though the original Draft of the Constitution provided for either the direct election or the appointment of the Governor by the President from a panel of four candidates elected by the Legislative Assembly. (Article 131 of the draft which was to become Article 155), the Constituent Assembly chose a third alternative for the appointment of the Governor by the President, so as to avoid confrontation with the elected executive.

Dr. Ambedkar categorically stated on the floor that “The Governor under the Constitution has no functions which he can discharge by himself; no functions at all. While he has no functions, he has certain duties to perform...” Instead of a powerful Governor, what the Constitution conceived was a duty-bound Governor.

Important Articles:

1. <https://www.thehindu.com/opinion/lead/the-governor-is-under-the-constitution-not-above-it/article66154252.ece>
2. <https://www.thehindu.com/thread/law/the-office-of-the-governor/article65204517.ece>
3. <https://indianexpress.com/article/explained/governors-powers-friction-with-states-and-why-this-happens-often-dhankhar-mamata-twitter-7765001/>



A classic example of Raj Bhavan getting embroiled in partisan politics was sketched by a series of events in Tamil Nadu beginning from the declaration of national emergency on June 25, 1975. This was followed by the DMK regime offering political support and shelter to the national dissidents which led to realignments in State politics. A report was then sent by the then Governor K. K. Shah seeking the dismissal of the DMK government for pervasive corruption and therefore, President's Rule was imposed on February 3, 1976. **The President's Rule was imposed in States over a 100 times prior to 1994.**

But after the Supreme Court's judgment in the *S. R. Bommai* case, such rampant practices came to an end as the Supreme Court declared that the imposition of President's Rule shall be confined only to the breakdown of constitutional machinery.







Chief Minister:

Article 163

There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.

If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final.

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

- The governor is the nominal executive authority (de jure executive) and the Chief Minister is the real executive authority (de facto executive).
- Constitution does not contain any specific procedure for the selection and appointment of the Chief Minister. **Article 164 only says that the Chief Minister shall be appointed by the governor.**
- A person who **is not a member of the state legislature can be appointed as Chief Minister for six months, and within 6 months he/she has to acquire membership of either house (as applicable) otherwise he/she will have to resign.**

Council of Minister:

- 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, and
- the Ministers shall hold office during the pleasure of the Governor
- The **total number of Ministers, including the Chief Minister**, in the Council of Ministers in a State shall not exceed fifteen per cent.
- The Council of Ministers shall be **collectively responsible** to the Legislative Assembly of the State.
- Governor shall administer **oath of Office and Secrecy** to each minister before entering in office.
- The salaries and allowances of Ministers shall be such as the Legislature of the State may from time to time by law determine.

Duties of Chief Minister as respects the furnishing of information to Governor, etc.—It shall be the duty of the Chief Minister of each State—

- (a) 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;
- (b) to furnish such information relating to the administration of the affairs of the State and proposals for legislation as the Governor may call for; and
- (c) 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.





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