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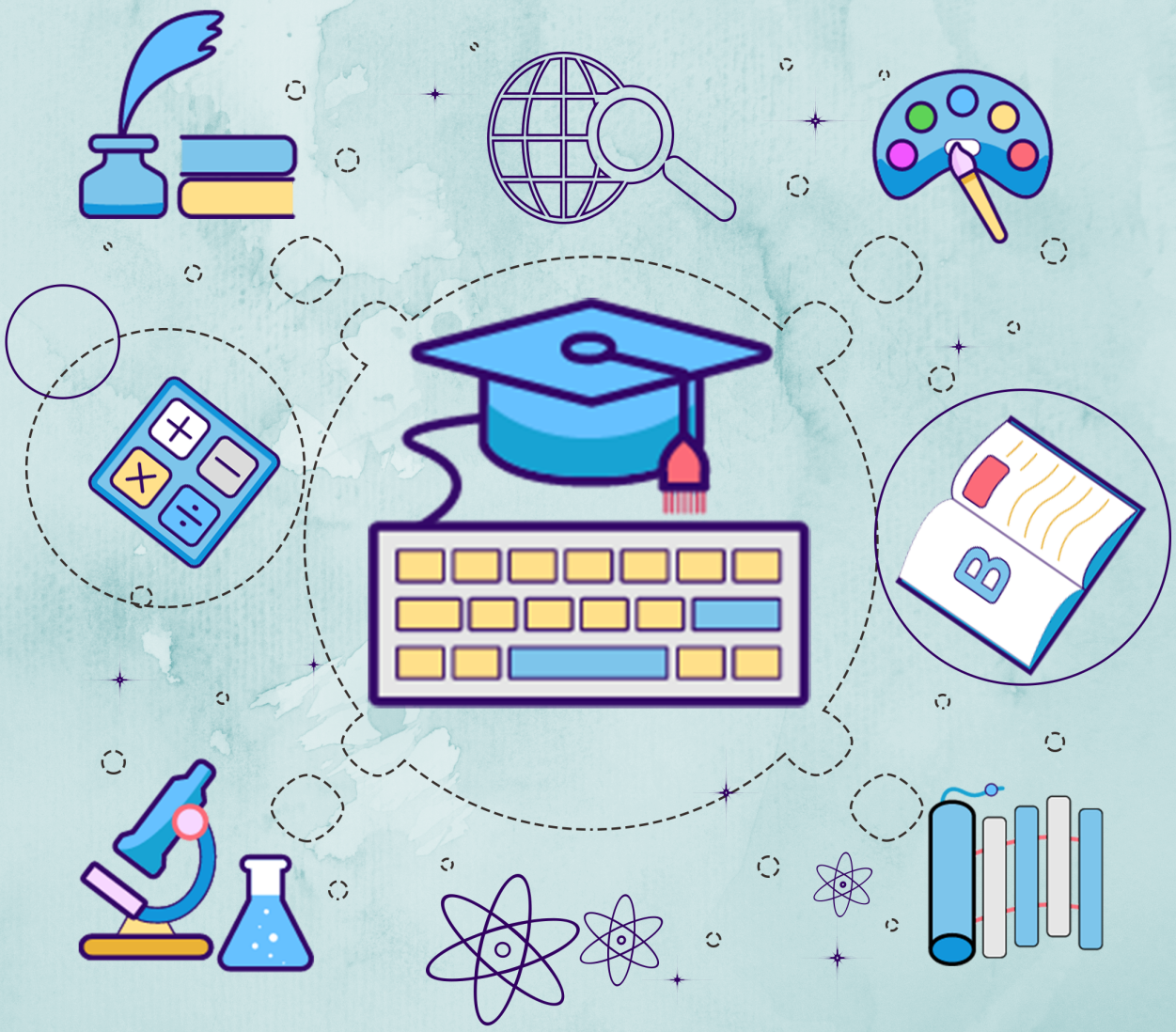

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MODULE 4

The State executive, the Governor, the council of ministers, the Chief Minister, advocate general, union Territories.

The State Legislature, composition, qualification and disqualification of membership, functions.

The state judiciary, the high court, jurisdiction, writs jurisdiction

What are the qualifications of the Governor?

(1) He must be a citizen of India.

(2) He must not be less than 35 years of age.

(3) He must not hold any office of Profit in Union or State Government.

(4) He must not be a member of either house of Parliament or any state legislature. In case he is a member of Parliament or State legislature and is appointed as the Governor, he must resign his membership before assuming the office.

Explain the powers and functions of the Governor.

The Governor enjoys many different types of powers: Executive, Legislative, Financial, Judicial and Discretionary powers.

Executive powers

The Constitution vests in the Governor all the executive powers of the State Government. The Governor appoints the Chief Minister who enjoys the support of the majority in the Legislative Assembly (Vidhan Sabha). The Governor also appoints the other members of the Council of Ministers and distributes portfolios to them on the advice of the Chief Minister. The Governor appoints the Chief Minister of a state. He/she also appoints the Advocate General and the chairman and members of the State Public Service Commission. The President consults the Governor in the appointment of judges of the High Courts and the Governor appoints the judges of the District Courts.

Legislative powers

The Governor summons the sessions of both houses of the state legislature and prorogues them. The Governor can even dissolve the Legislative Assembly. These powers are formal and the Governor while using these powers must act according to the advice of the Council of Ministers headed by the Chief Minister.

The Governor inaugurates the state legislature by addressing it after the assembly elections and also at the beginning of the first session every year. The Governor's address on these occasions generally outlines new policies of the state government.

A bill that the state legislature has passed can become a law only after the Governor gives his assent. The Governor can return a bill to the state legislature, if it is not a money bill, for reconsideration. However, if the state legislature sends it back to the Governor for the second time, the Governor must assent to it. The Governor has the power to reserve certain bills for the President. When the state legislature is not in session and the Governor considers it necessary to have a law, then the Governor can promulgate ordinances. These ordinances are submitted to the state legislature at its next session. They remain valid for no more than six weeks from the date the state legislature is reconvened unless approved by it earlier.

Financial powers

Money bills can be introduced in the State Legislative Assembly only on the prior recommendation of the Governor. Further no demand for grant shall be made except on his/her recommendation. He can also make advances out of the Contingency Fund of the State to meet any unforeseen expenditure. Moreover, he constitutes the State Finance Commission.

Judicial Powers

Under Article.161, he has the power to grant pardon, reprieve or remission of punishment or to suspend, remit or commute the sentences of any person, convicted of any offence against any law relating to the matter which the executive authority of the state extends.

Discretionary powers

Normally, the Governor has to act on the aid and advice of the Council of ministers headed by the Chief Minister. However, there are situations when the Governor has to act as per his/her own judgment and take decisions on his own. These are called the discretionary powers of the Governor. The Governor exercises them in the following cases:

In the appointment of the Chief Minister of a state

When no party gets a majority in the Legislative Assembly, the Governor can either ask the leader of the single largest party or the consensus leader of two or more parties to form the government. The Governor then appoints the leader of the largest party as Chief Minister.

In informing the President of the failure of constitutional machinery in a state

The Governor can send a report to the President informing him or her that the State's constitutional functioning has been compromised and recommending the President impose "President's rule" upon the state.

Dismissal of the Ministry

The Governor can use his discretion in dismissing a ministry when the party in power loses majority or is likely to lose majority in the State Legislature due to a revolt or split in the party.

Discuss the powers and functions of Chief Minister

The powers and functions of the Chief Minister can be studied under the following heads:

- In Relation to Council of Ministers

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The Chief Minister enjoys the following powers as head of the state council of ministers:
(a) The governor appoints only those persons as ministers who are recommended by the Chief Minister.
(b) He allocates and reshuffles the portfolios among ministers.
(c) He can ask a minister to resign or advise the governor to dismiss him in case of difference of opinion.
(d) He presides over the meetings of the council of ministers and influences its decisions.
(e) He guides, directs, controls and coordinates the activities of all the ministers.
(f) He can bring about the collapse of the council of ministers by resigning from office. Since the Chief Minister is the head of the council of ministers, his resignation or death automatically dissolves the council of ministers. The resignation or death of any other minister, on the other hand, merely creates a vacancy, which the Chief Minister may or may not like to fill.

- In Relation to the Governor

The Chief Minister enjoys the following powers in relation to the governor:
(a) He is the principal channel of communication between the governor and the council of ministers. It is the duty of the Chief Minister:
(i) to communicate to the Governor of the state all decisions of the council of ministers relating to the administration of the affairs the state and proposals for legislation;
(ii) to furnish such information relating to the administration of t affairs of the state and proposals for legislation as the govern may call for; and
(iii) if the governor so requires, to submit for the consideration of t council of ministers any matter on which a decision has be taken by a minister but which has not been considered by t council.
(b) He advises the governor with regard to the appointment of important officials like advocate general, chairman and members of the state public service commission, state election commissioner, and so on.

- In Relation to State Legislature

The Chief Minister enjoys the following powers as the leader of the house:
(a) He advises the governor with regard to the summoning and proroguing of the sessions of the state legislature.
(b) He can recommend the dissolution of the legislative assembly to the governor at any time.
(c) He announces the government policies on the floor of the house.

- Other Powers and Functions

In addition, the Chief Minister also performs the following functions:
(a) He is the chairman of the State Planning Board.
(b) He acts as a vice-chairman of the concerned zonal council by rotation, holding office for a period of one year at a time.
(c) He is a member of the Inter-State Council and the Governing Council of NITI Aayog, both headed by the prime minister.
(d) He is the chief spokesman of the state government.
(e) He is the crisis manager-in-chief at the political level during emergencies.
(f) As a leader of the state, he meets various sections of the people and receives memoranda from them regarding their problems, and so on.
(g) He is the political head of the services. Thus, he plays a very significant and highly crucial role in the state administration. However, the discretionary powers enjoyed by the governor reduces to some extent the power, authority, influence, prestige and role of the Chief Minister in the state administration.

Explain the role of advocate general?

The advocate general is appointed by the governor. He must be a person who is qualified to be appointed a judge of a high court. In other words, he must be a citizen of India and must have held a judicial office for ten years or been an advocate of a high court for ten years.
He is the highest law officer in the state and corresponds to the Attorney General of India.

As the chief law officer of the government in the state, the duties of the advocate general include the following:

1. To give advice to the government of the state upon such legal matters which are referred to him by the governor.

2. To perform such other duties of a legal character that are assigned to him by the governor.

3. To discharge the functions conferred on him by the Constitution or any other law.

In the performance of his official duties, the advocate general is entitled to appear before any court of law within the state. Further, he has the right to speak and to take part in the proceedings of both the Houses of the state legislature or any committee of the state legislature of which he may be named a member, but without a right to vote. He enjoys all the privileges and immunities that are available to a member of the state legislature.

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Discuss the qualification and disqualification of membership of state legislature

A person shall be qualified to be chosen to fill a seat in the Legislature of a State if he-
(a) is a citizen of India, and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule;
(b) is, in the case of a seat in the Legislative Assembly, not less than twenty-five years of age and, in the case of a seat in the Legislative Council, not less than thirty years of age; and
(c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

Disqualification of membership of state legislature is given by Articles 191 (1) and 191 (2). According to Article 191 (1), a person is disqualified for being chosen as and for being a member of state legislature if he:
1. Is of unsound mind or;
2. Holds any office of profit under any government—Union or State or;
3. Is an undischarged insolvent or;
4. Is not a citizen of India or voluntarily renounced the Indian citizenship or;
5. Disqualified under any law made by the Parliament.
If any question arises as to whether a member is subjected to disqualification on the above grounds, then the Governor has the power to decide. The Governor must obtain the opinion of the Election Commission before he makes the decision.
Article 191 (2) provides for the disqualification on ground of defection. In case of disqualification on ground of defection the Speaker or Chairman has the power to decide and the decision is final.

What are the powers and functions of state legislature?

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

Explain about State Judiciary
In the Indian single integrated judicial system, the high court operates below the Supreme Court but above the subordinate courts.
The judiciary in a state consists of a high court and a hierarchy of subordinate courts.
The high court occupies the top position in the judicial administration of a state.
Articles 214 to 231 in Part VI of the Constitution deal with the organisation, independence, jurisdiction, powers, procedures and so on of the high courts.

How judges in High court are appointed?
Appointment of Judges
The judges of a high court are appointed by the President. The chief justice is appointed by the President after consultation with the chief justice of India and the governor of the state concerned.
Qualifications of Judges
A person to be appointed as a judge of a high court, should have the following qualifications:
1. He should be a citizen of India.
2. (a) He should have held a judicial office in the territory of India for ten years; or
(b) He should have been an advocate of a high court (or high courts in succession) for ten years.

Examine the jurisdiction and power of High court
The Constitution of India provides for a high court for each state, but the Seventh Amendment Act of 1956 authorized the Parliament to establish a common high court for two or more states or for two or more states and a union territory. The territorial jurisdiction of a high court is co-terminus with the territory of a state. The jurisdiction of High courts are
1. Original jurisdiction.
2. Writ jurisdiction.
3. Appellate jurisdiction.
4. Supervisory jurisdiction.
5. Control over subordinate courts.
6. A court of record.
7. Power of judicial review.

- Original Jurisdiction:.

It means the power of a high court to hear disputes in the first
instance, not by way of appeal. It extends to the following:
(a) Matters of admirality and contempt of court.
(b) Disputes relating to the election of members of Parliament and state legislatures.
(c) Regarding revenue matter or an act ordered or done in revenue collection.
(d) Enforcement of fundamental rights of citizens.
(e) Cases ordered to be transferred from a subordinate court involving the interpretation of the Constitution to its own file.
(f) The four high courts (i.e., Calcutta, Bombay, Madras and Delhi High Courts) have original civil jurisdiction in cases of higher value.

- Writ Jurisdiction:

Article 226 of the Constitution empowers a high court to issue writs including habeas corpus, mandamus, certiorari, prohibition and quo warranto for the enforcement of the fundamental rights of the citizens

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and for any other purpose. When the fundamental rights of a citizen are violated, the aggrieved party has the option of moving either the high court or the Supreme Court directly.
The high court can issue writs to any person, authority and government not only within its territorial jurisdiction but also outside its territorial jurisdiction

- Appellate Jurisdiction:

A high court is primarily a court of appeal. It hears appeals against the judgements of subordinate courts functioning in its territorial jurisdiction. It has appellate jurisdiction in both civil and criminal matters. Hence, the appellate jurisdiction of a high court is wider than its original jurisdiction.

- Supervisory Jurisdiction:

A high court has the power of superintendence over all courts and tribunals functioning in its territorial jurisdiction (except military courts or tribunals). Thus, it may–
(a) call for returns from them;
(b) make and issue, general rules and prescribe forms for regulating the practice and proceedings of them;
(c) prescribe forms in which books, entries and accounts are to be kept by them; and
(d) settle the fees payable to the sheriff, clerks, officers and legal practitioners of them.

- Control over Subordinate Courts:

In addition to its appellate jurisdiction and supervisory jurisdiction over the subordinate courts as mentioned above, a high court has an administrative control and other powers over them. These include the following:
(a) It is consulted by the governor in the matters of appointment, posting and promotion of district judges and in the appointments of persons to the judicial service of the state (other than district judges).
(b) It deals with the matters of posting, promotion, grant of leave, transfers and discipline of the members of the judicial service of the state (other than district judges).
(c) It can withdraw a case pending in a subordinate court if it involves a substantial question of law that require the interpretation of the Constitution. It can then either dispose of the case itself or determine the question of law and return the case to the subordinate court with its judgement.
(d) Its law is binding on all subordinate courts functioning within its territorial jurisdiction in the same sense as the law declared by the Supreme Court is binding on all courts in India.

- A Court of Record:

The judgments, proceedings and acts of the high courts are recorded for perpetual memory and testimony. As a court of record, a high court has two powers:
(a) The judgements, proceedings and acts of the high courts are recorded for perpetual memory and testimony. These records are admitted to be of evidentiary value and cannot be questioned when produced before any subordinate court. They are recognised as legal precedents and legal references.
(b) It has power to punish for contempt of court, either with simple imprisonment or with fine or with both

- Power of Judicial Review:

Judicial review is the power of a high court to examine the constitutionality of legislative enactments and executive orders of both the Central and state governments. On examination, if they are found to be violative of the Constitution (ultra-vires), they can be declared as illegal, unconstitutional and invalid (null and void) by the high court. Consequently, they cannot be enforced by the government.

Examine the writ jurisdiction of High court.

A writ is a quick remedy against injustice, a device for the protection of the rights of citizens against any encroachment by the governmental authority.
The Supreme Court has been empowered to issue writs in the nature of habeas corpus, mandamus, prohibition, and certiorari and quo warranto for protecting the fundamental rights [article 32(2)]. Similar power has been conferred on the high courts via article 226. The high court can issue the above writs for protecting the fundamental as well as statutory and common law rights. The high courts can issue writs to any governmental authority outside their territorial jurisdiction, provided the cause of action arises (in whole or in part) within their territorial jurisdiction.
When the fundamental rights of a citizen are violated, the aggrieved party has the option of moving either the high court or the Supreme Court directly.

The Indian Constitution provides 5 types of writs which can be issued by the Courts. They are:

1. Habeas Corpus
2. Mandamus
3. Certiorari
4. Quo Warranto
5. Prohibition

Habeas Corpus
The Writ of Habeas Corpus is issued by the Courts in those cases where a person is illegally detained. Habeas Corpus means 'to have the body' and it is one of the most effective remedies available to a person detained.

Mandamus
In the Writ of Mandamus, the superior courts order the Inferior Courts to do an act or to abstain from doing an act. This order can also be given to an Inferior Tribunal, Board, Corporation or any other type of administrative authority.

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Certiorari

This Writ is corrective in nature which means the purpose of this Writ is to correct an error which is apparent on the records. This can be issued when the superior court wants to decide a matter in the case itself or if there is an excess of jurisdiction by the inferior court. This Writ can also be issued when there is a fundamental error in the procedure followed by the inferior court or if there is a violation of the principles of natural justice.

Quo Warranto

The Writ of Quo Warranto is issued by the courts against a private person when he assumes an office on which he has no right. Quo Warranto literally means 'by what authority' and it is an effective measure to prevent people from taking over public offices.

Prohibition

This Writ is not issued often and is an extraordinary remedy which a Superior Court issues to an inferior court or tribunal for stopping them from deciding a case because these courts do not have the jurisdiction. If the court or tribunals does not have jurisdiction and it still decides the case, it will be an invalid judgement because for an act to be legal it should have the sanction of law.

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