

Fundamentals of Indian Constituion - 22HSI17/27

Unit III

State Executive

GOVERNOR

State executive consists of Governor and Council of Ministers with Chief Minister as its head. The Governor of a State is appointed by the President for a term of five years and holds office during his pleasure. Only Indian citizens above 35 years of age are eligible for appointment to this office. Executive power of the State is vested in Governor.

Council of Ministers with Chief Minister as head aids and advises Governor in exercise of his functions except in so far as he is by or under the Constitution required to exercise his functions or any of them in his discretion. In respect of Nagaland, Governor has special responsibility under Article 371 A of the Constitution with respect to law and order and even though it is necessary for him to consult Council of Ministers in matters relating to law and order, he can exercise his individual judgement as to the action to be taken.

Similarly, in respect of Arunachal Pradesh, Governor has special responsibility under Article 371H of the Constitution with respect to law and order and in discharge of his functions in relation thereto. Governor shall, after consulting Council of Ministers, exercise his individual judgement as to the action to be taken. These are, however, temporary provisions if President, on receipt of a report from Governor or otherwise is satisfied that it is no longer necessary for Governor to have special responsibility with respect to law and order, he may so direct by an order.

Likewise, in the Sixth Schedule which applies to tribal areas of Assam, Meghalaya, Tripura and Mizoram as specified in para 20 of that Schedule, discretionary powers are given to Governor in matters relating to sharing of royalties between district council and state government. Sixth Schedule vests additional discretionary powers in Governors of Mizoram and Tripura in almost all their functions (except approving regulations for levy of taxes and money lending by non-tribal by district councils) since December 1998. In Sikkim, Governor has been given special responsibility for peace and social and economic advancement of different sections of population.

All Governors while discharging such constitutional functions as appointment of Chief Minister of a State or sending a report to President about failure of constitutional machinery in a State or in respect of matters relating to assent to a Bill passed by legislature, exercise their own judgement.

Chief Minister

He is the head of the state government. While the governor is the nominal executive of the state government, the person who becomes the chief minister is the real executive of the government. The real executive is called 'de facto' executive that means, 'in fact, whether by right or not.'

Appointment of Chief Minister

Just like the prime Minister, provisions of whose appointment are not mentioned in the Indian Constitution, Chief Minister's appointment particulars are not mentioned in the Constitution. According to Article 164 in the Indian Constitution, Governor appoints Chief Minister. However, the Governor cannot appoint any random person as the Chief Minister but has to follow a provision.

A leader of the party that has got the majority share of votes in the assembly elections, is appointed as the Chief Minister of the state.

Note:

- When no party gets a majority in the elections, governor exercises his own discretion and appoint a Chief Minister accordingly.
- In a case where no party has won the majority votes, Governor appoints the member of the largest party or one from the coalition (if occurs) as the Chief Minister and then he is given 1 month time to prove confidence in the house.
- If the incumbent dies in the office, Governor at his own discretion can appoint a Chief Minister however, the ruling party nominates a member and Governor usually appoints that person as the Chief Minister. This person then has to prove confidence within a specified time.
- A person not belonging to either house (Legislative Assembly & Council) can also be appointed as the Chief Minister, however, within six months of his tenure as a CM he should be elected to either house without which he ceases to be a CM.
- Chief Minister can belong to any house in the State Legislature.

Term of Chief Minister's office

Aspirants should clearly understand that the **term of Chief Minister is not fixed** and he holds his office during the pleasure of the governor.

Note:

- Governor cannot remove him any time.
- Governor cannot even dismiss him till the time he enjoys the support of the majority of the house.
- When CM loses his majority support, he has to resign and Governor dismisses him then.

Functions of the Chief Minister

The CM of the state performs functions in relation to the different categories of people:

1. In relation to the Council of Ministers
2. In relation to the Governor
3. In relation to the State Legislature

Other than that, he also performs the following functions:

1. He chairs the State Planning Board
2. He is a vice-chairperson of the concerned zonal council by rotation, holding that office for a period of one year at a time
3. He is a member of Inter-State Council and National Development Council which are headed by the Prime Minister. Council Of Ministers

The Chief Minister is appointed by the Governor who also appoints other ministers on the advice of the Chief Minister. The Council of Ministers is collectively responsible to legislative assembly of the State.

State Legislature

For every state, there is a legislature, which consists of Governor and one House or, two Houses as the case may be. In Bihar, Jammu and Kashmir, Karnataka, Maharashtra and Uttar Pradesh, there are two Houses known as legislative council and legislative assembly. In the remaining states, there is only one House known as legislative assembly. Parliament may, by law, provide for abolition of an existing legislative council or for creation of one where it does not exist, if proposal is supported by a resolution of the legislative assembly concerned.

Legislative Council

Legislative Council (Vidhan Parishad) of a state comprises not more than one-third of total number of members in legislative assembly of the state and in no case less than 40 members (Legislative Council of Jammu and Kashmir has 36 members vide Section 50 of the Constitution of Jammu and Kashmir). About one-third of members of the council are elected by members of legislative assembly from amongst persons who are not its members, one-third by electorates consisting of members of municipalities, district boards and other local authorities in the state, one-twelfth by electorate consisting of persons who have been, for at least three years, engaged in teaching in educational institutions within the state not lower in standard than secondary school and a further one-twelfth by registered graduates of more than three years standing. Remaining members are nominated by Governor from among those who have distinguished themselves in literature, science, art, cooperative movement and social service. Legislative councils are not subject to dissolution but one-third of their members retire every second year.

Legislative Assembly

Legislative Assembly (Vidhan Sabha) of a state consists of not more than 500 and not less than 60 members (Legislative Assembly of Sikkim has 32 members vide Article 371F of the Constitution) chosen by direct election from territorial constituencies in the state. Demarcation of territorial constituencies is to be done in such a manner that the ratio between population of each

constituency and number of seats allotted to it, as far as practicable, is the same throughout the state. Term of an assembly is five years unless it is dissolved earlier.

Powers and Functions of State Legislature

State legislature has exclusive powers over subjects enumerated in List II of the Seventh Schedule of the Constitution and concurrent powers over those enumerated in List III. Financial powers of legislature include authorisation of all expenditure, taxation and borrowing by the state government. Legislative assembly alone has power to originate money bills. Legislative council can make only recommendations in respect of changes it considers necessary within a period of fourteen days of the receipt of money bills from Assembly. Assembly can accept or reject these recommendations.

Election Commission of India

The Constitution of India has established a permanent and independent body to ensure free and fair elections in the country known as the Election Commission. The commission is responsible for holding Lok Sabha elections of India.

The Constitution provides the Election Commission of India with the power of direction, superintendence, and control of elections to parliament, state legislatures, the office of president of India and the office of vice-president of India.

The Election Commission is an all-India body that is common to both the Central government and the State governments. It must be noted here that the commission does not deal with the elections to the Municipalities and Panchayats in the states. Hence, a separate State Election Commission is provided by the Constitution of India.

Constitutional Appointment of ECI

Since its inception in 1950 and till 15 October 1989, the election commission was a one-member body with only the Chief Election Commissioner (CEC) as its sole member.

- On 16 October 1989, the voting age was changed from 21 to 18 years. So, two more election commissioners were appointed by the president in order to cope with the increased work of the election commission.
- Since then, the Election Commission was a multi-member body that consisted of 3 election commissioners.
- Later on, the two posts of election commissioners were eliminated in January 1990 and the Election Commission was reverted to the previous position.
- This was repeated again later in October 1993 when the president appointed two more election commissioners. Since then, the Election Commission functions as a multi-member body comprising of 3 commissioners.
- The chief and the two other election commissioners have the same powers and emoluments including salaries, which are the same as a Supreme Court judge.

- In case of a difference of opinion amongst the Chief Election Commissioner and/or two other election commissioners, the matter is decided by the Commission by a majority.
- The office is held by them for a term of 6 years or until they attain 65 years, whichever happens first. They can also be removed or can resign at any time before the expiry of their term.

Powers of Election Commission of India

In details, these powers of the Election Commission of India are:

- Determining the Electoral Constituencies' territorial areas throughout the country on the basis of the Delimitation Commission Act of Parliament.
- Preparing and periodically revising electoral rolls and registering all eligible voters.
- Notifying the schedules and dates of elections and scrutinising nomination papers.
- Granting recognition to the various political parties and allocating them election symbols.
- Acting as a court to settle disputes concerning the granting of recognition to political parties and allocating election symbols to the parties.
- Appointing officers for inquiring into disputes concerning electoral arrangements.
- Determining the code of conduct to be followed by the political parties and candidates during elections.
- Preparing a program for publicising the policies of all the political parties on various media like TV and radio during elections.
- Advising the President on matters concerning the disqualification of MPs.
- Advising the Governor on matters concerning the disqualification of MLAs.
- Cancelling polls in case of booth capturing, rigging, violence and other irregularities.
- Requesting the Governor or the President for requisitioning the staff required for conducting elections.
- Supervising the machinery of elections throughout the country for ensuring the conduct of free and fair elections.

Functions of Election Commission

1. To direct and control the entire process of conducting elections to Parliament and Legislature of every State and to the offices of President and Vice-President of India.
2. To decide the election schedules for the conduct of periodic and timely elections, whether general or bye-elections
3. To decide on the location of polling stations, assignment of voters to the polling stations, location of counting centres, arrangements to be made in and around polling stations and counting centres and all allied matters
4. To prepare electoral roll and issues Electronic Photo Identity Card (EPIC)
5. To grant recognition to political parties & allot election symbols to them along with settling disputes related to it

6. To sets limits of campaign expenditure per candidate to all the political parties, and also monitors the same
7. To advise in the matter of post-election disqualification of sitting members of Parliament and State Legislatures.
8. To issue the Model Code of Conduct in the election for political parties and candidates so that no one indulges in unfair practice or there is no arbitrary abuse of powers by those in power.

Composition of Election Commission

Article 324 of the Constitution has made the following provisions with regard to the composition of the election commission:

- The President appoints the Chief Election Commissioner and other election commissioners.
- When any other EC is so appointed, the CEC acts as the Election Commission's Chairman.
- The President can also appoint regional commissioners to assist the Commission, if necessary after consulting with the Election Commission.
- The tenure of office and the conditions of service of all the commissioners shall be determined by the country's President.

Electoral Process

Elections in India are conducted according to the procedure laid down by law. The following process is observed.

Notification for Election

The process of election officially begins when on the recommendation of Election Commission, the President in case of Lok Sabha and the Governor in case of State Assembly issue a notification for the election. Seven days are given to candidates to file nomination. The seventh day is the last date after the issue of notification excluding Sunday. Scrutiny of nomination papers is done on the day normally after the last date of filing nominations. The candidate can withdraw his/her nomination on the second day after the scrutiny of papers. Election is held not earlier than twentieth day after the withdrawal.

Filing of Nomination

Structure of Government A person who intends to contest an election is required to file the nomination paper in a prescribed form indicating his name, age, postal address and serial number in the electoral rolls. The candidate is required to be duly proposed and seconded by at least two voters registered in the concerned constituency. Every candidate has to take an oath or make affirmation. These papers are then submitted to the Returning Officer designated by the Election Commission.

Security Deposit

Every candidate has to make a security deposit at the time of filing nomination. For Lok Sabha every candidate has to make a security deposit of Rs.10,000/- and for State Assembly Rs. 5,000. But candidates belonging to Scheduled Castes and Scheduled Tribes are required to deposit Rs. 5,000/- for if contesting the Lok Sabha elections and Rs. 2,500/- for contesting Vidhan Sabha elections. The security deposit is forfeited if the candidate fails to get at least 1/6 of the total valid votes polled.

Scrutiny and Withdrawal

All nomination papers received by the Returning Officer are scrutinised on the day fixed by the Election Commission. This is done to ensure that all papers are filled according to the procedure laid down and accompanied by required security deposit. The Returning Officer is empowered to reject a nomination paper on any one of the following ground:

- (i) If the candidate is less than 25 years of age.
- (ii) If he/she has not made security deposit.
- (iii) If he/she is holding any office of profit.
- (iv) If he/she is not listed as a voter anywhere in the country The second day after the scrutiny of nomination papers is the last date for the withdrawal of the candidates. In case that day happens to be a holiday or Sunday, the day immediately after that is fixed as the last day for the withdrawal.

Election Campaign

Campaigning is the process by which a candidate tries to persuade the voters to vote for him rather than others. During this period, the candidates try to travel through their constituency to influence as many voters as possible to vote in their favour. In the recent times, the Election Commission has granted all the recognised National and Regional Parties, free access to the State-owned electronic media, the All India Radio (AIR) and the Doordarshan to do their campaigning. The total free time is fixed by the Election Commission which is allotted to all the political parties. Campaigning stops 48 hours before the day of polling. A number of campaign techniques are involved in the election process.

Model Code of Conduct

During the campaign period the political parties and the contesting candidates are expected to abide by a model code of conduct evolved by the Election Commission of India on the basis of the consensus among political parties. It comes into force the moment schedule of election is announced by the Election Commission. The code of conduct is as follows:

- (i) Political Parties and contesting candidates should not use religious places for election campaign.
- (ii) Such speeches should not be delivered in a way to create hatred among different communities belonging to different religions, castes and languages, etc.
- (iii) Official machinery should not be used for election work.

- (iv) No new grants can be sanctioned, no new schemes or projects can be started once the election dates are announced.
- (v) One cannot misuse mass media for partisan coverage

Scrutinisation of Expenses

Though the Election Commission provides free access for a limited time to all the recognised National and State parties for their campaign, this does not mean that political parties do not spend anything on their elections campaign. The political parties and the candidates contesting election spend large sum of amount on their election campaign. However, the Election Commission has the power to scrutinize the election expenses to be incurred by the candidates. There is a ceiling on expenses to be incurred in Parliamentary as well as State Assembly elections. Every candidate is required to file an account of his election expenses within 45 days of declaration of results. In case of default or if the candidate has incurred (expenses) more than the prescribed limit, the Election Commission can take appropriate action and the candidate elected may be disqualified and his election may be countermanded.

Polling, Counting and Declaration of Result

In order to conduct polling, large number of polling booths are set up in each constituency. Each booth is placed under the charge of a Presiding Officer with the Polling Officers to help the process. A voter casts his/her vote secretly in an enclosure, so that no other person comes to know of the choice he/she has made. It is known as secret ballot. After the polling is over, ballot boxes are sealed in the presence of agents of the candidates. Agents ensure that no voter is denied right to vote, provided the voter turns up comes within the prescribed time limit.

Article 368- Amendment Procedure

Article 368 of the Indian Constitution mentions two types of amendments to the Indian Constitution. One type of amendment is by a special majority of the Parliament (Lok Sabha & Rajya Sabha) and the second type of the amendment is the by a special majority of the Parliament with the ratification by half of the total states.

Types of Amendments in Indian Constitution

The list of types of amendments can be found below. There are three ways in which the Constitution can be amended:

1. Amendment by simple majority of the Parliament
2. Amendment by special majority of the Parliament
3. Amendment by special majority of the Parliament and the ratification of at least half of the state legislatures.

1. By Simple Majority of Parliament

A number of provisions in the Constitution can be amended by a simple majority of the two houses of Parliament outside the scope of Article 368. These provisions include:

- Admission or establishment of new states.
- Formation of new states and alteration of areas, boundaries or names of existing states.

- Abolition or creation of legislative councils in states.
- Second Schedule-emoluments,
- Allowances, privileges and so on of the president, the governors, the Speakers, judges, etc.
- Quorum in Parliament.
- Salaries and allowances of the members of Parliament.
- Rules of procedure in Parliament.
- Privileges of the Parliament, its members and its committees.
- Use of the English language in Parliament.
- Number of puisne judges in the Supreme Court.
- Conferment of more jurisdiction on the Supreme Court.
- Citizenship acquisition and termination.
- Elections to Parliament and state legislatures.
- Delimitation of constituencies.
- Union territories
- Fifth Schedule-administration of scheduled areas and scheduled tribes.
- Sixth Schedule-administration of tribal areas.

2. By Special Majority of Parliament

- The majority of the provisions in the Constitution need to be amended by a special majority of the Parliament, that is, a majority (that is, more than 50 percent) of the total membership of each House and a majority of two-thirds of the members of each House present and voting. The expression 'total membership' means the total number of members comprising the House irrespective of the fact whether there are vacancies or absentees.
- The special majority is required only for voting at the third reading stage of the bill but by way of abundant caution, the requirement for the special majority has been provided for in the rules of the Houses in respect of all the effective stages of the bill.
- The provisions which can be amended by this way include (i) Fundamental Rights; (ii) Directive Principles of State Policy and (iii) All other provisions which are not covered by the first and third categories.

3. By Special Majority of Parliament and Consent of States

Those provisions of the Constitution which are related to the federal structure of the polity can be amended by a special majority of the Parliament and also with the consent of half of the state legislatures by a simple majority. If one or some or all the remaining states take no action on the bill, it does not matter; the moment half of the states give their consent, the formality is completed. There is no time limit within which the states should give their consent to the bill. The following provisions can be amended in this way:

- Election of the President and its manner.

- Extent of the executive power of the Union and the states.
- Supreme Court and high courts.
- Distribution of legislative powers between the Union and the states.
- Any of the lists in the Seventh Schedule.
- Representation of states in Parliament.
- Power of Parliament to amend the Constitution and its procedure (Article 368 itself).

Important Amendments of the Indian Constitution

1. First Amendment Act, 1951

The state was given the authority to create specific arrangements for the progress of socially and economically disadvantaged classes. The Ninth Schedule was added.

- Some additional Acts were included in the Ninth Schedule. This was accommodated by Fourth Amendment Act, 1955.
- Inclusion of the 44 additional Acts in the Ninth Schedule was accommodated by the 17th Amendment Act, 1964.
- The inclusion of the two Kerala Acts on land reforms was accommodated by the 29th Amendment Act, 1972 in the Ninth Schedule.
- Inclusion of the twenty additional land tenure and land reforms acts from various states in the Ninth Schedule was accommodated by 34th Amendment Act, 1974.

2. Second Amendment Act, 1952

The measure of representation in the Lok Sabha has been rebalanced, such that one member can now represent more than 7.5 lakh people.

3. Seventh Amendment Act, 1956

The concept of a joint High Court for two or more states was presented.

Class A, B, C, and D states were abolished, and 14 states and six union territories were constituted.

The establishment of Union Territories was proposed.

4. Ninth Amendment Act, 1960

Adjustments to Indian territory as a result of a 1958 agreement with Pakistan:

Cession of Berubari Union territory in India to Pakistan.

5. Tenth Amendment Act, 1961

Dadra, Haveli, and Nagar were admitted to the Union of India as Union Territories.

6. 12th Amendment Act, 1962

Goa, Diu, and Daman were admitted to the Indian Union as Union Territories.

7. 13th Amendment Act, 1962

Under Article 371A, Nagaland was granted special status.

8. 14th Amendment Act, 1962

Pondicherry was brought into the Indian Union, and the legislature and council of ministers were handed to Himachal Pradesh, Goa, Tripura, Daman and Diu, Manipur, and Puducherry.

9. 19th Amendment Act, 1966

Election Tribunals were disbanded, and High Courts were given the authority to consider election petitions.

10. 21st Amendment Act, 1967

Sindhi was included in the Indian Constitution's 8th Schedule.

11. 24th Amendment Act, 1971

The President's approval of the Constitutional Amendment Bill has been made mandatory.

12. 25th Amendment Act, 1971

The fundamental right to property has been restricted.

13. 26th Amendment Act, 1971

The Privy Purse and the rights of old princely state rulers were eliminated.

14. 31st Amendment Act, 1972

The number of Lok Sabha seats was raised from 525 to 545.

15. 35th Amendment Act, 1974

Sikkim's position as a protectorate state was dissolved, and Sikkim was elevated to the status of 'Associate State' of India.

16. 36th Amendment Act, 1975

Sikkim was elevated to the status of a full-fledged state of India.

17. 52nd Amendment Act, 1985

A new tenth Schedule was introduced to include anti-defection legislation.

18. 61st Amendment Act, 1989

For both Lok Sabha and Legislative Assemblies elections, the voting age was reduced from 21 to 18.

19. 65th Amendment Act, 1990

The post of a special officer for SCs and STs was abolished, and a multi-member National Commission for SC/STs was created.

20. 69th Amendment Act, 1991

The Union Territory of Delhi was designated as the 'National Capital Territory of Delhi.'

21. 71st Amendment Act, 1992

The total number of official languages now stands at 18.

22. 73rd Amendment Act, 1992

Constitutional status was granted to Panchayath Raj institutions.

23. 74th Amendment Act, 1992

Local governments in cities have been accorded constitutional standing.

24. 101st Amendment Act, 2016

The Goods and Services Tax (GST) was implemented.

25. 102nd Amendment Act, 2018

The National Commission for Backward Classes was granted constitutional status.

Emergency Provisions in Indian Constitution

Emergency in the Indian Constitution can be differentiated as National Emergencies, State Emergencies, and Financial Emergencies. Part XVIII of the Constitution contains the emergency provisions in India.

- **Article 352 demarcates the National Emergency:** According to Article 352, the President may declare an emergency when the region is under a state of attack, external intrusion, or internal rebellion. Though such a declaration could only be made in the presence of the legislative house and further supported by each chamber, the emergency was withdrawn after a month of announcement.
The first emergency in the Nation was declared during the war with China, which lasted between 1962 and 1968. After that, the most contentious emergency was declared due to internal conflict by Smt. Indira Gandhi.
- **State Emergency has been included in Article 356:** Article 356 marks out that the President can declare a state emergency on receipt of briefs by the Governor of a particular state or by the President's observation on degrading mechanisms of the state. Thirty-five instances of President rule have been recorded under the rule of Smt. Indira Gandhi.
- **Financial Emergencies are in Article 360:** The President can declare financial emergencies if convincing evidence of an unstable economy and credibility is encountered. Executive and legislative factors play a central role in declaring a financial emergency. According to Article 360, a corresponding proclamation will be withheld during the entire emergency period. Financial emergency has never been declared in India.