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President

Articles 52 to 78 in Part V of the Constitution deal with the Union executive.

The Union executive consists of the President, the Vice-President, the Prime Minister, the council of ministers and the attorney general of India.

The President is the head of the Indian State. He is the first citizen of India and acts as the symbol of unity, integrity and solidarity of the nation.

ELECTION OF THE PRESIDENT

The President is elected not directly by the people but by members of electoral college consisting of:

1. the elected members of both the Houses of Parliament;
2. the elected members of the legislative assemblies of the states; and
3. the elected members of the legislative assemblies of the Union Territories of Delhi and Puducherry¹.

Thus, the nominated members of both of Houses of Parliament, the nominated members of the state legislative assemblies, the members (both elected and nominated) of the state legislative councils (in case of the bicameral legislature) and the nominated members of the Legislative Assemblies of Delhi and Puducherry do not participate in the election of the President. Where an assembly is dissolved, the members cease to be qualified

to vote in presidential election, even if fresh elections to the dissolved assembly are not held before the presidential election.

The Constitution provides that there shall be uniformity in the scale of representation of different states as well as parity between the states as a whole and the Union at the election of the President. To achieve this, the number of votes which each elected member of the legislative assembly of each state and the Parliament is entitled to cast at such election shall be determined in the following manner:

1. Every elected member of the legislative assembly of a state shall have as many votes as there are multiples of one thousand in the quotient obtained by dividing the population of the state by the total number of the elected members of the assembly². This can be expressed as:

Value of the vote of an MLA

$$= \frac{\text{Total population of state}}{\text{Total number of elected members in the state legislative assembly}} \times \frac{1}{1000}$$

2. Every elected member of either House of Parliament shall have such number of votes as may be obtained by dividing the total number of votes assigned to members of the legislative assemblies of the states by the total number of the elected members of both the Houses of Parliament. This can be expressed as

Value of the vote of an MP =

$$\frac{\text{Total value of votes of all MLAs of all states}}{\text{Total number of elected members of Parliament}}$$

The President's election is held in accordance with the system of proportional representation by means of the single transferable vote and the voting is by secret ballot. This system ensures that the successful candidate is returned by the absolute majority of votes. A candidate, in order to be declared elected to the office of President, must secure a fixed quota of votes. The quota of votes is determined by dividing the total number of valid votes polled by the number of candidates to be elected (here only one candidate is to be elected as President) plus one and adding one to the quotient. The

dominated by one political party from that party and such a President cannot represent the Indian Union. The present system makes the President a representative of the Indian Union and the states equally.

Further, it was pointed out in the Constituent Assembly that the expression 'proportional representation' in the case of presidential election is a misnomer. Proportional representation takes place where two or more seats are to be filled. In case of the President, the vacancy is only one. It could better be called a preferential or alternative vote system. Similarly, the expression 'single transferable vote' was also objected on the ground that no voter has a single vote; every voter has plural votes.

QUALIFICATIONS, OATH AND CONDITIONS

Qualifications for Election as President

A person to be eligible for election as President should fulfil the following qualifications:

- 1. He should be a citizen of India.
- 2. He should have completed 35 years of age.
- 3. He should be qualified for election as a member of the Lok Sabha.
- 4. He should not hold any office of profit under the Union government or any state government or any local authority or any other public authority.

A sitting President or Vice-President of the Union, the Governor of any state and a minister of the Union or any state is not deemed to hold any office of profit and hence qualified as a presidential candidate.

Table 17.1 *Elections of the Presidents (1952-2012)*

Sl. No.	Election Year	Victorious Candidate	No. of Votes secured (%)	Main Rival Candidate	No. of Votes secured (%)
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President must be subscribed by at least 50 electors as proposers and electors as seconders. Every candidate has to make a security deposit of Rs 15,000 in the Reserve Bank of India. The security deposit is liable to be forfeited in case the candidate fails to secure one-sixth of the votes polled. Before 1997, number of proposers and seconders was ten each and the amount of security deposit was Rs 2,500. In 1997, they were increased to discourage the non-serious candidates⁴.

Oath or Affirmation by the President

Before entering upon his office, the President has to make and subscribe to an oath or affirmation. In his oath, the President swears:

- ✓ 1. to faithfully execute the office;
- ✓ 2. to preserve, protect and defend the Constitution and the law; and
- ✓ 3. to devote himself to the service and well-being of the people of India.

The oath of office to the President is administered by the Chief Justice of India and in his absence, the seniormost judge of the Supreme Court available.

Any other person acting as President or discharging the functions of the President also undertakes the similar oath or affirmation.

Conditions of President's Office

The Constitution lays down the following conditions of the President's office:

- ✓ 1. He should not be a member of either House of Parliament or a House of the state legislature. If any such person is elected as President, he is deemed to have vacated his seat in that House on the date on which he enters upon his office as President.
- ✓ 2. He should not hold any other office of profit.
- ✓ 3. He is entitled, without payment of rent, to the use of his official residence (the Rastrapati Bhavan).
- ✓ 4. He is entitled to such emoluments, allowances and privileges as may be determined by Parliament.
- ✓ 5. His emoluments and allowances cannot be diminished during his term of

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Prime Minister

In the scheme of parliamentary system of government provided by the constitution, the President is the nominal executive authority (*de jure* executive) and Prime Minister is the real executive authority (*de facto* executive). In other words, president is the head of the State while Prime Minister is the head of the government.

APPOINTMENT OF THE PRIME MINISTER

The 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. However, this does not imply that the president is free to appoint any one as the Prime Minister. In accordance with the conventions of the parliamentary system of government, the President has to appoint the leader of the majority party in the Lok Sabha as the Prime Minister. But, when no party has a clear majority in the Lok Sabha, then the President may exercise his personal discretion in the selection and appointment of the Prime Minister. 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. This discretion was exercised by the President, for the first time in 1979, when Neelam Sanjiva Reddy (the then President) appointed Charan Singh (the coalition leader) as the Prime Minister after the fall of the

There is also one more ~~discretion~~^{the Prime} his individual judgement in the selection and appointment of the Prime Minister, that is, when the Prime Minister in office dies suddenly and there is no obvious successor. This is what happened when Indira Gandhi was assassinated in 1984. The then President Zail Singh appointed Rajiv Gandhi as the Prime Minister by ignoring the precedent of appointing a caretaker Prime Minister.¹ Later on, the Congress parliamentary party unanimously elected him as its leader. However, if, on the death of an incumbent Prime Minister, the ruling party elects a new leader, the President has no choice but to appoint him as Prime Minister.

In 1980, the Delhi High Court held that the Constitution does not require that a person must prove his majority in the Lok Sabha before he is appointed as the Prime Minister. The President may first appoint him the Prime Minister and then ask him to prove his majority in the Lok Sabha within a reasonable period. For example, Charan Singh (1979), VP Singh (1989), Chandrasekhar (1990), PV Narasimha Rao (1991), AB Vajyapee (1996), Deve Gowda (1996), IK Gujral (1997) and again AB Vajpayee (1998) were appointed as Prime Ministers in this way.

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.

Constitutionally, the Prime Minister may be a member of any of the two Houses of parliament. For example, three Prime Ministers, Indira Gandhi (1966), Deve Gowda (1996) and Manmohan Singh (2004), were members of the Rajya Sabha. In Britain, on the other hand, the Prime Minister should definitely be a member of the Lower House (House of Commons).

OATH, TERM AND SALARY

Before the Prime Minister enters upon his office, the president administers to him the oaths of office and secrecy.² In his oath of office, the Prime Minister swears:

1. to bear true faith and allegiance to the Constitution of India,
2. to uphold the sovereignty and integrity of India,
3. to faithfully and conscientiously discharge the duties of his office, and
4. to do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill will.

In his oath of secrecy, the Prime Minister swears that he will not directly or indirectly communicate or reveal to any person(s) any matter that is brought under his consideration or becomes known to him as a Union Minister except as may be required for the due discharge of his duties as such minister.

The term of the Prime Minister is not fixed and he holds office during the pleasure of the president. However, this does not mean that the president can dismiss the Prime Minister at any time. So long as the Prime Minister enjoys the majority support in the Lok Sabha, he cannot be dismissed by the President. However, if he loses the confidence of the Lok Sabha, he must resign or the President can dismiss him.³

The salary and allowances of the Prime Minister are determined by the Parliament from time to time. He gets the salary and allowances that are payable to a member of Parliament. Additionally, he gets a sumptuary allowance, free accommodation, travelling allowance, medical facilities, etc. In 2001, the Parliament increased his sumptuary allowance from ₹1,500 to ₹3,000 per month.

POWERS AND FUNCTIONS OF THE PRIME MINISTER

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

In Relation to Council of Ministers

The Prime Minister enjoys the following powers as head of the Union council of ministers:

1. He recommends persons who can be appointed as ministers by the president. The President can appoint only those persons as ministers who are recommended by the Prime Minister.
2. He allocates and reshuffles various portfolios among the ministers.

3. He can ask a minister to resign or advise the President to dismiss him in case of difference of opinion.
4. He presides over the meeting of council of ministers and influences its decisions.
5. He guides, directs, controls, and coordinates the activities of all the ministers.
6. He can bring about the collapse of the council of ministers by resigning from office.

Since the Prime Minister stands at the head of the council of ministers, the other ministers cannot function when the Prime Minister resigns or dies. In other words, the resignation or death of an incumbent Prime Minister automatically dissolves the council of ministers and thereby generates a vacuum. The resignation or death of any other minister, on the other hand, merely creates a vacancy which the Prime Minister may or may not like to fill.

In Relation to the President

The Prime Minister enjoys the following powers in relation to the President:

1. He is the principal channel of communication between the President and the council of ministers.⁴ It is the duty of the prime minister :
 - (a) to communicate to the President all decisions of the council of ministers relating to the administration of the affairs of the Union and proposals for legislation;
 - (b) to furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for; and
 - (c) if the President 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.
2. He 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.

In Relation to Parliament

The Prime Minister is the leader of the Lower House. In this capacity, he enjoys the following powers:

1. He advises the President with regard to summoning and proroguing of the sessions of the Parliament.
2. He can recommend dissolution of the Lok Sabha to President at any time.
3. He announces government policies on the floor of the House.

Other Powers & Functions

In addition to the above-mentioned three major roles, the Prime Minister has various other roles. These are:

1. He is the chairman of the Planning Commission (now NITI Aayog), National Development Council, National Integration Council, Inter-State Council and National Water Resources Council.
2. He plays a significant role in shaping the foreign policy of the country.
3. He is the chief spokesman of the Union government.
4. He is the crisis manager-in-chief at the political level during emergencies.
5. 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.
6. He is leader of the party in power.
7. He is political head of the services.

Thus, the Prime Minister plays a very significant and highly crucial role in the politico-administrative system of the country. Dr B R Ambedkar stated, 'If any functionary under our constitution is to be compared with the US president, he is the Prime Minister and not the president of the Union'.

ROLE DESCRIPTIONS

The various comments made by the eminent political scientists and constitutional experts on the role of Prime Minister in Britain holds good in the Indian context also. These are mentioned below:

Lord Morely He described Prime Minister as 'primus inter pares' (first

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Central Council of Ministers

As the Constitution of India provides for a parliamentary system of government modelled on the British pattern, the council of ministers headed by the prime minister is the real executive authority in our politico-administrative system.

The principles of parliamentary system of government are not detailed in the Constitution, but two Articles (74 and 75) deal with them in a broad, sketchy and general manner. 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.

CONSTITUTIONAL PROVISIONS

Article 74—Council of Ministers to aid and advise President

1. There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice. However, the President may require the Council of Ministers to reconsider such advice and the President shall act in accordance with the advice tendered after such reconsideration.
2. The advice tendered by Ministers to the President shall not be inquired

into in any court.

Article 75—Other Provisions as to Ministers

1. 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.
2. 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 provision was added by the 91st Amendment Act of 2003.
3. 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.
4. The ministers shall hold office during the pleasure of the President.
5. The council of ministers shall be collectively responsible to the Lok Sabha.
6. The President shall administer the oaths of office and secrecy to a minister.
7. A minister who is not a member of the Parliament (either house) for any period of six consecutive months shall cease to be a minister.
8. The salaries and allowances of ministers shall be determined by the Parliament.

Article 77—Conduct of Business of the Government of India

1. All executive action of the Government of India shall be expressed to be taken in the name of the President.
2. Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules to be made by the President. Further, the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President.

APPOINTMENT OF MINISTERS

The Prime Minister is appointed by the President, while the other ministers are appointed by the President on the advice of the Prime Minister. This means that the President can appoint only those persons as ministers who are recommended by the Prime minister.

Usually, the members of Parliament, either Lok Sabha or Rajya Sabha, are appointed as ministers. A person who is not a member of either House of Parliament can also be appointed as a minister. But, within six months, he must become a member (either by election or by nomination) of either House of Parliament, otherwise, he ceases to be a minister.

A minister who is a member of one House of Parliament has the right to speak and to take part in the proceedings of the other House also, but he can vote only in the House of which he is a member.

OATH AND SALARY OF MINISTERS

Before a minister enters upon his office, the president administers to him the oaths of office and secrecy. In his oath of office, the minister swears:

1. to bear true faith and allegiance to the Constitution of India,
2. to uphold the sovereignty and integrity of India,
3. to faithfully and conscientiously discharge the duties of his office, and
4. to do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill will.

In his oath of secrecy, the minister swears that he will not directly or indirectly communicate or reveal to any person(s) any matter that is brought under his consideration or becomes known to him as a Union minister except as may be required for the due discharge of his duties as such minister.

stated that describing a person as Deputy Prime Minister is descriptive only and such description does not confer on him any powers of Prime Minister. It ruled that the description of a minister as Deputy Prime Minister or any other type of minister such as minister of state or deputy minister of which there is no mention in the Constitution does not vitiate the oath taken by him so long as the substantive part of the oath is correct.

The salaries and allowances of ministers are determined by Parliament from time to time.² A minister gets the salary and allowances that are payable to a member of Parliament. Additionally, he gets a sumptuary allowance (according to his rank), free accommodation, travelling allowance, medical facilities, etc. In 2001, the sumptuary allowance for the prime minister was raised from ₹1,500 to ₹3,000 per month, for a cabinet minister from ₹1,000 to ₹2,000 per month, for a minister of state from ₹500 to ₹1,000 per month and for a deputy minister from ₹300 to ₹600 per month.

RESPONSIBILITY OF MINISTERS

Collective Responsibility

The fundamental principle underlying the working of parliamentary system of government is the principle of collective responsibility. Article 75 clearly states that the council of ministers is collectively responsible to the Lok Sabha. This means that all the ministers own joint responsibility to the Lok Sabha for all their acts of omission and commission. They work as a team and swim or sink together. When the Lok Sabha passes a no-confidence motion against the council of ministers, all the ministers have to resign including those ministers who are from the Rajya Sabha.³ Alternatively, the council of ministers can advise the president to dissolve the Lok Sabha on the ground that the House does not represent the views of the electorate faithfully and call for fresh elections. The President may not oblige the council of ministers that has lost the confidence of the Lok Sabha.

The principle of collective responsibility also means that the Cabinet

In India, on the other hand, there is no provision in the Constitution for the system of legal responsibility of a minister. It is not required that an order of the President for a public act should be countersigned by a minister. Moreover, the courts are barred from enquiring into the nature of advice rendered by the ministers to the president.

COMPOSITION OF THE COUNCIL OF MINISTERS

The council of ministers consists of three categories of ministers, namely, cabinet ministers, ministers of state,⁵ and deputy ministers. The difference between them lies in their respective ranks, emoluments, and political importance. At the top of all these ministers stands the Prime Minister—the supreme governing authority of the country.

The cabinet ministers head the important ministries of the Central government like home, defence, finance, external affairs and so forth. They are members of the cabinet, attend its meetings and play an important role in deciding policies. Thus, their responsibilities extend over the entire gamut of Central government.

The ministers of state can either be given independent charge of ministries/departments or can be attached to cabinet ministers. In case of attachment, they may either be given the charge of departments of the ministries headed by the cabinet ministers or allotted specific items of work related to the ministries headed by cabinet ministers. In both the cases, they work under the supervision and guidance as well as under the overall charge and responsibility of the cabinet ministers. In case of independent charge, they perform the same functions and exercise the same powers in relation to their ministries/departments as cabinet ministers do. However, they are not members of the cabinet and do not attend the cabinet meetings unless specially invited when something related to their ministries/departments are considered by the cabinet.

Next in rank are the deputy ministers. They are not given independent charge of ministries/departments. They are attached to the cabinet ministers or ministers of state and assist them in their administrative, political, and parliamentary duties. They are not members of the cabinet and do not attend cabinet meetings.

called parliamentary secretaries. They are attached to the council of ministers (which is also known as the 'ministry'). There is no department under their control. They are attached to the senior ministers and assist them in the discharge of their parliamentary duties. However, since 1967, no parliamentary secretaries have been appointed except during the first phase of Rajiv Gandhi Government.

At times, the council of ministers may also include a deputy prime minister. The deputy prime ministers are appointed mostly for political reasons.

COUNCIL OF MINISTERS VS CABINET

The words 'council of ministers' and 'cabinet' are often used interchangeably though there is a definite distinction between them. They differ from each other in respects of composition, functions, and role. These differences are shown in Table 20.1.

Table 20.1 Distinction Between Council of Ministers and Cabinet

Council of ministers	Cabinet
1. It is a wider body consisting of 60 to 70 ministers.	1. It is a smaller body consisting of 15 to 20 ministers.
2. It includes all the three categories of ministers, that is, cabinet ministers, ministers of state, and deputy ministers.	2. It includes the cabinet ministers only. Thus, it is a part of the council of ministers.
3. It does not meet, as a body, to transact government business. It has no collective functions.	3. It meets, as a body, frequently and usually once in a week to deliberate and take decisions regarding the transaction of government business. Thus, it has collective functions.
4. It is vested with all powers but in	4. It exercises, in practice, the powers of the council of ministers

theory.

5. Its functions are determined by the cabinet.

6. It implements the decisions taken by the cabinet.

7. It is a constitutional body, dealt in detail by the Articles 74 and 75 of the Constitution. Its size and classification are, however, not mentioned in the Constitution. Its size is determined by the prime minister according to the exigencies of the time and requirements of the situation. Its classification into a three-tier body is based on the conventions of parliamentary government as developed in Britain. It has, however, got a legislative sanction. Thus, the Salaries and Allowances Act of 1952 defines a 'minister' as a 'member of the council of ministers, by whatever name called, and includes a deputy minister'.

8. It is collectively responsible to the Lower House of the Parliament.

and thus, acts for the latter.

5. It directs the council of ministers by taking policy decisions which are binding on all ministers.

6. It supervises the implementation of its decisions by the council of ministers.

7. It was inserted in Article 352 of the Constitution in 1978 by the 44th Constitutional Amendment Act. Thus, it did not find a place in the original text of the Constitution. Now also, Article 352 only defines the cabinet saying that it is 'the council consisting of the prime minister and other ministers of cabinet rank appointed under Article 75' and does not describe its powers and functions. In other words, its role in our politico-administrative system is based on the conventions of parliamentary government as developed in Britain.

8. It enforces the collective responsibility of the council of ministers to the Lower House of Parliament.

ROLE OF CABINET

Role of Cabinet

- ✓ 1. It is the highest decision-making authority in our politico-administrative system.
- 2. It is the chief policy formulating body of the Central government.
- 3. It is the supreme executive authority of the Central government.
- 4. It is chief coordinator of Central administration.
- 5. It is an advisory body to the president and its advice is binding on him.
- 6. It is the chief crisis manager and thus deals with all emergency situations.
- 7. It deals with all major legislative and financial matters.
- 8. It exercises control over higher appointments like constitutional authorities and senior secretariat administrators.
- 9. It deals with all foreign policies and foreign affairs.

ROLE DESCRIPTIONS

The various comments made by the eminent political scientists and constitutional experts on the role of cabinet in Britain holds good in the Indian context also. These are mentioned below.

Ramsay Muir "The Cabinet is the steering wheel of the ship of the state."

Lowell "The Cabinet is the keystone of the political arch".

Sir John Marriott "The Cabinet is the pivot around which the whole political machinery revolves".

Gladstone "The Cabinet is the solar orb around which the other bodies revolve".

Barker "The Cabinet is the magnet of policy".

Bagehot "The Cabinet is a hyphen that joins, the buckle that binds the executive and legislative departments together".

Sir Ivor Jennings "The Cabinet is the core of the British Constitutional System. It provides unity to the British system of Government".

Governor

The Constitution of India envisages the same pattern of government in the states as that for the Centre, that is, a parliamentary system. Part VI of the Constitution, which deals with the government in the states, is not applicable to the State of Jammu and Kashmir, which enjoys a special status and has a separate Constitution of its own.

Articles 153 to 167 in Part VI of the Constitution deal with the state executive. The state executive consists of the governor, the chief minister, the council of ministers and the advocate general of the state. Thus, there is no office of vice-governor (in the state) like that of Vice-President at the Centre.

The governor is the chief executive head of the state. But, like the president, he is a nominal executive head (titular or constitutional head). The governor also acts as an agent of the central government. Therefore, the office of governor has a dual role.

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.

APPOINTMENT OF GOVERNOR

The governor is neither directly elected by the people nor indirectly elected by a specially constituted electoral college as is the case with the president:

He is 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. It is an independent constitutional office and is not under the control of or subordinate to the Central government.

The Draft Constitution provided for the direct election of the governor on the basis of universal adult suffrage. But the Constituent Assembly opted for the present system of appointment of governor by the president because of the following reasons¹:

1. The direct election of the governor is incompatible with the parliamentary system established in the states.
2. The mode of direct election is more likely to create conflicts between the governor and the chief minister.
3. The governor being only a constitutional (nominal) head, there is no point in making elaborate arrangements for his election and spending huge amount of money.
4. The election of a governor would be entirely on personal issues. Hence, it is not in the national interest to involve a large number of voters in such an election.
5. An elected governor would naturally belong to a party and would not be a neutral person and an impartial head.
6. The election of governor would create separatist tendencies and thus affect the political stability and unity of the country.
7. The system of presidential nomination enables the Centre to maintain its control over the states.
8. The direct election of the governor creates a serious problem of leadership at the time of a general election in the state.
9. The chief minister would like his nominee to contest for governorship. Hence, a second rate man of the ruling party is elected as governor.

Therefore, the American model, where the Governor of a state is directly elected, was dropped and the Canadian model, where the governor of a province (state) is appointed by the Governor-General (Centre), was accepted in the Constituent Assembly.

The Constitution lays down only two qualifications for the appointment of a person as a governor. These are:

1. He should be a citizen of India.
2. He should have completed the age of 35 years.

Additionally, two conventions have also developed in this regard over the years. First, he should be an outsider, that is, he should not belong to the state where he is appointed, so that he is free from the local politics. Second, while appointing the governor, the president is required to consult the chief minister of the state concerned, so that the smooth functioning of the constitutional machinery in the state is ensured. However, both the conventions have been violated in some of the cases.

CONDITIONS OF GOVERNOR'S OFFICE

The Constitution lays down the following conditions for the the governor's office:

1. He should not be a member of either House of Parliament or a House of the state legislature. If any such person is appointed as governor, he is deemed to have vacated his seat in that House on the date on which he enters upon his office as the governor.
2. He should not hold any other office of profit.
3. He is entitled without payment of rent to the use of his official residence (the *Raj Bhavan*).
4. He is entitled to such emoluments, allowances and privileges as may be determined by Parliament.
5. 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.
6. His emoluments and allowances cannot be diminished during his term of office.

In 2008, the Parliament has increased the salary of the governor from ₹ 36,000 to ₹1.10 lakh per month.²

Like the President, the governor is also entitled to a number of privileges and immunities. He enjoys personal immunity from legal liability for his official acts. During his term of office, he is immune from any criminal proceedings, even in respect of his personal acts. He cannot be arrested or imprisoned. However, after giving two months' notice, civil proceedings can

be instituted against him during his term of office in respect of his personal acts.

Before entering upon his office, the governor has to make and subscribe to an oath or affirmation. In his oath, the governor swears:

- (a) to faithfully execute the office;
- (b) to preserve, protect and defend the Constitution and the law; and
- (c) to devote himself to the service and well-being of the people of the state.

The oath of office to the governor is administered by the chief justice of the concerned state high court and in his absence, the senior-most judge of that court available.

Every person discharging the functions of the governor also undertakes the similar oath or affirmation.

TERM OF GOVERNOR'S OFFICE

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 Supreme Court held that the pleasure of the President is not justifiable. The governor has no security of tenure and no fixed term of office. He may be removed by the President at any time.³

The Constitution does not lay down any grounds upon which a governor may be removed by the President. Hence, the National Front Government headed by V P Singh (1989) asked all the governors to resign as they were appointed by the Congress government. Eventually, some of the governors were replaced and some were allowed to continue. The same thing was repeated in 1991, when the Congress Government headed by P V Narasimha Rao changed fourteen governors appointed by the V P Singh and Chandra Sekhar governments.

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.

A governor can hold office beyond his term of five years until his

successor assumes charge. The underlying idea is that there must be a governor in the state and there cannot be an interregnum.

The President can make such provision as he thinks fit for the discharge of the functions of the governor in any contingency not provided for in the Constitution, for example, the death of a sitting governor. Thus, the chief justice of the concerned state high court may be appointed temporarily to discharge the functions of the governor of that state.

POWERS AND FUNCTIONS OF GOVERNOR

A governor possesses executive, legislative, financial and judicial powers more or less analogous to the President of India. However, he has no diplomatic, military or emergency powers like the president.

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

1. Executive powers.
2. Legislative powers.
3. Financial powers.
4. Judicial powers.

Executive Powers

The executive powers and functions of the Governor are:

1. All executive actions of the government of a state are formally taken in his name.
2. He can make rules specifying the manner in which the Orders and other instruments made and executed in his name shall be authenticated.
3. 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.
4. He appoints the chief minister and other ministers. They also hold office during his pleasure. There should be a Tribal Welfare minister in the states of Chattisgarh, Jharkhand, Madhya Pradesh and Odisha appointed by him. The state of Bihar was excluded from this provision by the 94th Amendment Act of 2006.

5. He appoints the advocate general of a state and determines his remuneration. The advocate general holds office during the pleasure of the governor.
6. 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.
7. 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.
8. He can seek any information relating to the administration of the affairs of the state and proposals for legislation from the chief minister.
9. He can require the chief minister 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.
10. He can recommend the imposition of constitutional emergency in a state to the president. During the period of President's rule in a state, the governor enjoys extensive executive powers as an agent of the President.
11. He acts as the chancellor of universities in the state. He also appoints the vice-chancellors of universities in the state.

Legislative Powers

A governor is an integral part of the state legislature. In that capacity, he has the following legislative powers and functions:

1. He can summon or prorogue the state legislature and dissolve the state legislative assembly.
2. He can address the state legislature at the commencement of the first session after each general election and the first session of each year.
3. He can send messages to the house or houses of the state legislature, with respect to a bill pending in the legislature or otherwise.
4. 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. Similarly, he can appoint any member of the state legislature council to preside over its proceedings when the offices of

Financial Powers

The financial powers and functions of the governor are:

1. He sees that the Annual Financial Statement (state budget) is laid before the state legislature.
2. Money bills can be introduced in the state legislature only with his prior recommendation.
3. No demand for a grant can be made except on his recommendation.
4. He can make advances out of the Contingency Fund of the state to meet any unforeseen expenditure.
5. He constitutes a finance commission after every five years to review the financial position of the panchayats and the municipalities.

Judicial Powers

The judicial powers and functions of the governor are:

1. He can grant pardons, reprieves, respites and remissions of punishment or suspend, remit and commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the state extends.⁵
2. He is consulted by the president while appointing the judges of the concerned state high court.
3. He makes appointments, postings and promotions of the district judges in consultation with the state high court.
4. He also appoints persons to the judicial service of the state (other than district judges) in consultation with the state high court and the State Public Service Commission.

Now, we will study in detail the three important powers of the governor (veto power, ordinance-making power and pardoning power) by comparing them with that of the President.

Table 30.1 Comparing Veto Powers of President and Governor

President	Governor
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Every ordinary bill, after it is passed by both the Houses of the Parliament either singly or at a joint sitting, is presented to the President for his assent. He has three alternatives:

1. He may give his assent to the bill, the bill then becomes an act.
2. He may withhold his assent to the bill, the bill then ends and does not become an act.
3. He may return the bill for reconsideration of the Houses. If the bill is passed by both the Houses again with or without amendments and presented to the President for his assent, the president must give his assent to the bill. Thus the president enjoys only a 'suspensive veto'.

When a state bill is reserved by the governor for the consideration of the President, the President has three alternatives:

- (a) He may give his assent to the bill, the bill then becomes an act.
- (b) He may withhold his assent to the bill, the bill then ends and does not become an Act.
- (c) He may return the bill for reconsideration of the House or

Every ordinary bill, after it is passed by the legislative assembly in case of a unicameral legislature or by both the Houses in case of a bicameral legislature either in the first instance or in the second instance, is presented to the governor for his assent. He has four alternatives:

1. He may give his assent to the bill, the bill then becomes an act.
2. He may withhold his assent to the bill, the bill then ends and does not become an act.
3. He may return the bill for reconsideration of the House or Houses. If the bill is passed by the House or Houses again with or without amendments and presented to the governor for his assent, the governor must give his assent to the bill. Thus, the governor enjoys only a 'suspensive veto'.
4. He may reserve the bill for the consideration of the President.

When the governor reserves a bill for the consideration of the President, he will not have any further role in the enactment of the bill. If the bill is returned by the President for the reconsideration of the House or Houses and is passed again, the bill

Houses of the state legislature. When a bill is so returned, the House or Houses have to reconsider it within six months. If the bill is passed by the House or Houses again with or without amendments and presented to the president for his assent, the president is not bound to give his assent to the bill. He may give his assent to such a bill or withhold his assent.

With Regard to Money Bills

Every money bill after it is passed by the Parliament, is presented to the President for his assent. He has two alternatives:

1. He may give his assent to the bill, the bill then becomes an act.
2. He may withhold his assent to the bill, the bill then ends and does not become an act.

Thus, the President cannot return a money bill for the reconsideration of the Parliament. Normally, the president gives his assent to a money bill as it is introduced in the Parliament with his previous permission.

When a Money Bill is reserved by the Governor for the consideration of the President, the President has two

must be presented again for the presidential assent only. If the President gives his assent to the bill, it becomes an act. This means that the assent of the Governor is no longer required.

With Regard to Money Bills

Every money bill, after it is passed by the state legislature (unicameral or bicameral), is presented to the governor for his assent. He has three alternatives:

1. He may give his assent to the bill, the bill then becomes an act.
2. He may withhold his assent to the bill, the bill then ends and does not become an act.
3. He may reserve the bill for the consideration of the president.

Thus, the governor cannot return a money bill for the reconsideration of the state legislature. Normally, the governor gives his assent to a money bill as it is introduced in the state legislature with his previous permission.

When the governor reserves a money

alternatives:

- (a) He may give his assent to the bill, President, he will not have any further role in the enactment of the bill. If the bill then becomes an Act.
 - (b) He may withhold his assent to the bill, the bill then ends and does not become an act. This means that the bill for the consideration of the President gives his assent to the bill, it becomes an Act. This means that the assent of the governor is no longer required.
- Thus, the President cannot return a money bill for the reconsideration of the state legislature (as in the case of the Parliament).

Table 30.2 Comparing Ordinance-Making Power of President and Governor

President	Governor
1. He can promulgate an ordinance only when both the Houses of Parliament are not in session or when either of the two Houses of Parliament is not in session. The second provision implies that an ordinance can also be promulgated by the president when only one House is in session because a law can be passed by both the Houses and not by one House alone.	1. He can promulgate an ordinance only when the legislative assembly (in case of a unicameral legislature) is not in session or (in case of a bi-cameral legislature) when both the Houses of the state legislature are not in session or when either of the two Houses of the state legislature is not in session. The last provision implies that an ordinance can be promulgated by the governor when only one House (in case of a bicameral legislature) is in session because a law can be passed by both the Houses and not by one House alone.
2. He can promulgate an ordinance only when he is satisfied that circumstances exist which render it necessary for him to take immediate action.	2. He can promulgate an ordinance only when he is satisfied that circumstances exist which render it necessary for him to take immediate action.
3. His ordinance-making	

power is co-extensive with the legislative power of the Parliament. This means that he can issue ordinances only on those subjects on which the Parliament can make laws.

4. An ordinance issued by him has the same force and effect as an act of the Parliament.

5. An ordinance issued by him is subject to the same limitations as an act of Parliament. This means that an ordinance issued by him will be invalid to the extent it makes any provision which the Parliament cannot make.

6. He can withdraw an ordinance at any time.

7. His ordinance-making power is not a discretionary power. This means that he can promulgate or withdraw an ordinance only on the advice of the council of ministers headed by the prime minister.

8. An ordinance issued by him should be laid before both the Houses of Parliament when it

3. His ordinance-making power is co-extensive with the legislative power of the state legislature. This means that he can issue ordinances only on those subjects on which the state legislature can make laws.

4. An ordinance issued by him has the same force and effect as an act of the state legislature.

5. An ordinance issued by him is subject to the same limitations as an act of the state legislature. This means that an ordinance issued by him will be invalid to the extent it makes any provision which the state legislature cannot make.

6. He can withdraw an ordinance at any time.

7. His ordinance-making power is not a discretionary power. This means that he can promulgate or withdraw an ordinance only on the advice of the council of ministers headed by the chief minister.

8. An ordinance issued by him should be laid before the legislative assembly or both the Houses of the state legislature (in case of a bicameral legislature) when it

reassembles.

9. An ordinance issued by him ceases to operate on the expiry of six weeks from the reassembly of Parliament. It may cease to operate even earlier than the prescribed six weeks, if both the Houses of Parliament passes resolutions disapproving it.

10. He needs no instruction for making an ordinance.

reassembles.

9. An ordinance issued by him ceases to operate on the expiry of six weeks from the reassembly of the state legislature. It may cease to operate even earlier than the prescribed six weeks, if a resolution disapproving it is passed by the legislative assembly and is agreed to by the legislative council (in case of a bicameral legislature).

10. He cannot make an ordinance without the instructions from the President in three cases:

- (a) If a bill containing the same provisions would have required the previous sanction of the President for its introduction into the state legislature.
- (b) If he would have deemed it necessary to reserve a bill containing the same provisions for the consideration of the President.
- (c) If an act of the state legislature containing the same provisions would have been invalid without receiving the President's assent.

Table 30.3 Comparing Pardoning Powers of President and Governor

President	Governor
<p>1. He can pardon, reprise, respite, remit, suspend or commute the punishment or sentence of any person convicted of any offence against a Central law.</p>	<p>1. He can pardon, reprise, respite, remit, suspend or commute the punishment or sentence of any person convicted of any offence against a state law.</p>

2. He can pardon, reprieve, respite, remit, suspend or commute a death sentence. He is the only authority to pardon a death sentence.
 3. He can grant pardon, reprieve, respite, suspension, remission or commutation in respect to punishment or sentence by a court-martial (military court).
2. He cannot pardon a death sentence. Even if a state law prescribes for death sentence, the power to grant pardon lies with the President and not the governor. But, the governor can suspend, remit or commute a death sentence.
 3. He does not possess any such power.

CONSTITUTIONAL POSITION OF GOVERNOR

The Constitution of India provides for a parliamentary form of government in the states as in the Centre. Consequently, the governor has been made only a nominal executive, the real executive constitutes the council of ministers headed by the chief minister. In other words, the governor has to exercise his powers and functions with the aid and advise of the council of ministers headed by the chief minister, except in matters in which he is required to act in his discretion (i.e., without the advice of ministers).

In estimating the constitutional position of the governor, particular reference has to be made to the provisions of Articles 154, 163 and 164. These are:

- (a) The executive power of the state shall be vested in the governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution (Article 154).
- (b) There shall be a council of ministers with the chief minister as the head to aid and advise the governor in the exercise of his functions, except in so far as he is required to exercise his functions in his discretion (Article 163).
- (c) The council of ministers shall be collectively responsible to the legislative assembly of the state (Article 164). This provision is the foundation of the

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Chief Minister

In the scheme of parliamentary system of government provided by the Constitution, the governor is the nominal executive authority (*de jure* executive) and the Chief Minister is the real executive authority (*de facto* executive). In other words, the governor is the head of the state while the Chief Minister is the head of the government. Thus the position of the Chief Minister at the state level is analogous to the position of prime minister at the Centre.

APPOINTMENT OF CHIEF MINISTER

The 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. However, this does not imply that the governor is free to appoint any one as the Chief Minister. In accordance with the conventions of the parliamentary system of government, the governor has to appoint the leader of the majority party in the state legislative assembly as the Chief Minister. But, when no party has a clear majority in the assembly, then the governor may exercise his personal discretion in the selection and appointment of the Chief Minister. In such a situation, the governor usually appoints the leader of the largest party or coalition in the assembly as the Chief Minister and ask him to seek a vote of confidence in the House within a month.¹

The governor may have to exercise his individual judgement in the selection and appointment of the Chief Minister when the Chief Minister in office dies suddenly and there is no obvious successor. However, on the death of a Chief Minister, the ruling party usually elects a new leader and the governor has no choice but to appoint him as Chief Minister.

The Constitution does not require that a person must prove his majority in the legislative assembly before he is appointed as the Chief Minister. The governor may first appoint him as the Chief Minister and then ask him to prove his majority in the legislative assembly within a reasonable period. This is what has been done in a number of cases².

A person who is not a member of the state legislature can be appointed as Chief Minister for six months, within which time, he should be elected to the state legislature, failing which he ceases to be the Chief Minister.³

According to the Constitution, the Chief Minister may be a member of any of the two Houses of a state legislature. Usually Chief Ministers have been selected from the Lower House (legislative assembly), but, on a number of occasions, a member of the Upper House (legislative council) has also been appointed as Chief Minister.⁴

OATH, TERM AND SALARY

Before the Chief Minister enters his office, the governor administers to him the oaths of office and secrecy.⁵ In his oath of office, the Chief Minister swears:

- 1. to bear true faith and allegiance to the Constitution of India,
- 2. to uphold the sovereignty and integrity of India,
- 3. to faithfully and conscientiously discharge the duties of his office, and
- 4. to do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill-will.

In his oath of secrecy, the Chief Minister swears that he will not directly or indirectly communicate or reveal to any person(s) any matter that is brought under his consideration or becomes known to him as a state minister except as may be required for the due discharge of his duties as such minister.

The term of the Chief Minister is not fixed and he holds office during the

pleasure of the governor. However, this does not mean that the governor can dismiss him at any time. He cannot be dismissed by the governor as long as he enjoys the majority support in the legislative assembly.⁶ But, if he loses the confidence of the assembly, he must resign or the governor can dismiss him.

The salary and allowances of the Chief Minister are determined by the state legislature. In addition to the salary and allowances, which are payable to a member of the state legislature, he gets a sumptuary allowance, free accommodation, travelling allowance, medical facilities, etc.

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

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.⁷ 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 of the state and proposals for legislation;
 - (ii) 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
 - (iii) 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.
- (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.⁸
- (c) He is a member of the Inter-State Council and the National Development Council, 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.

RELATIONSHIP WITH THE GOVERNOR

The following provisions of the Constitution deal with the relationship between the governor and the Chief Minister:

1. *Article 163*: There shall be a council of ministers with the Chief Minister as the head to aid and advise the governor on the exercise of his functions, except in so far as he is required to exercise his functions or any of them in his discretion.
2. *Article 164*:
 - (a) The Chief Minister shall be appointed by the governor and other ministers shall be appointed by the governor on the advise of the Chief Minister;
 - (b) The ministers shall hold office during the pleasure of the governor; and
 - (c) The council of ministers shall be collectively responsible to the legislative assembly of the state.
3. *Article 167*: It shall be the duty of the Chief Minister:
 - (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

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State Council of Ministers

As the Constitution of India provides for a parliamentary system of government in the states on the Union pattern, the council of ministers headed by the chief minister is the real executive authority in the politico-administrative system of a state. The council of ministers in the states is constituted and function in the same way as the council of ministers at the Centre.

The principles of parliamentary system of government are not detailed in the Constitution; but two Articles (163 and 164) deal with them in a broad, sketchy and general manner. Article 163 deals with the status of the council of ministers while Article 164 deals with the appointment, tenure, responsibility, qualifications, oath and salaries and allowances of the ministers.

CONSTITUTIONAL PROVISIONS

Article 163—Council of Ministers to aid and advise Governor

1. There shall be a Council of Ministers with the Chief Minister as the head to aid and advise the Governor in the exercise of his functions, except in so far as he is required to exercise his functions in his discretion.

2. If any question arises whether a matter falls within the Governor's discretion or not, decision of the Governor shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.
3. The advice tendered by Ministers to the Governor shall not be inquired into in any court.

Article 164—Other Provisions as to Ministers

1. 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. However, in the states of Chhattisgarh, Jharkhand, Madhya Pradesh and Odisha, there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the scheduled castes and backward classes or any other work. The state of Bihar was excluded from this provision by the 94th Amendment Act of 2006.
2. The total number of ministers, including the chief minister, in the council of ministers in a state shall not exceed 15 per cent of the total strength of the legislative assembly of that state. But, the number of ministers, including the chief minister, in a state shall not be less than 12. This provision was added by the 91st Amendment Act of 2003.
3. A member of either House of state legislature 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.
4. The ministers shall hold office during the pleasure of the Governor.
5. The council of ministers shall be collectively responsible to the state Legislative Assembly.
6. The Governor shall administer the oaths of office and secrecy to a minister.
7. A minister who is not a member of the state legislature for any period of six consecutive months shall cease to be a minister.
8. The salaries and allowances of ministers shall be determined by the state legislature.

Article 166—Conduct of Business of the Government of a State

1. All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.
2. Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor. Further, the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.
3. 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 required to act in his discretion.

Article 167—Duties of Chief Minister

It shall be the duty of the Chief Minister of each state

1. 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
2. To furnish such information relating to the administration of the affairs of the state and proposals for legislation as the governor may call for
3. 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

Article 177—Rights of Ministers as Respects the Houses

Every minister shall have the right to speak and take part in the proceedings of the Assembly (and also the Council where it exists) and any Committee of the State Legislature of which he may be named a member. But he shall not be entitled to vote.

NATURE OF ADVICE BY MINISTERS

Article 163 provides for a council of ministers with the chief minister at the head to aid and advise the governor in the exercise of his functions except the discretionary ones. If any question arises whether a matter falls within the governor's discretion or not, the decision of the governor is final and the validity of anything done by him cannot be called in question on the ground that he ought or ought not to have acted in his discretion. Further, the nature of advice tendered by ministers to the governor cannot be enquired by any court. This provision emphasises the intimate and the confidential relationship between the governor and the ministers.

In 1971, the Supreme Court ruled that a council of ministers must always exist to advise the governor, even after the dissolution of the state legislative assembly or resignation of a council of ministers. Hence, the existing ministry may continue in the office until its successor assumes charge. Again in 1974, the Court clarified that except in spheres where the governor is to act in his discretion, the governor has to act on the aid and advice of the council of ministers in the exercise of his powers and functions. He is not required to act personally without the aid and advice of the council of ministers or against the aid and advice of the council of ministers. Wherever the Constitution requires the satisfaction of the governor, the satisfaction is not the personal satisfaction of the governor but it is the satisfaction of the council of ministers.

APPOINTMENT OF MINISTERS

The chief minister is appointed by the governor. The other ministers are appointed by the governor on the advice of the chief minister. This means that the governor can appoint only those persons as ministers who are recommended by the chief minister.

But, there should be a tribal welfare minister in Chhattisgarh, Jharkhand, Madhya Pradesh and Odisha¹. Originally, this provision was applicable to Bihar, Madhya Pradesh and Odisha. The 94th Amendment Act of 2006 freed Bihar from the obligation of having a tribal welfare minister as there are no Scheduled Areas in Bihar now and the fraction of population of the

Scheduled Tribes is very small. The same Amendment also extended the above provision to the newly formed states of Chhattisgarh and Jharkhand.

Usually, the members of the state legislature, either the legislative assembly or the legislative council, are appointed as ministers. A person who is not a member of either House of the state legislature can also be appointed as a minister. But, within six months, he must become a member (either by election or by nomination) of either House of the state legislature, otherwise, he ceases to be a minister.

A minister who is a member of one House of the state legislature has the right to speak and to take part in the proceedings of the other House. But, he can vote only in the House of which he is a member.

OATH AND SALARY OF MINISTERS

Before a minister enters upon his office, the governor administers to him the oaths of office and secrecy. In his oath of office, the minister swears:

1. to bear true faith and allegiance to the Constitution of India,
2. to uphold the sovereignty and integrity of India,
3. to faithfully and conscientiously discharge the duties of his office, and
4. to do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill-will.

In his oath of secrecy, the minister swears that he will not directly or indirectly communicate or reveal to any person(s) any matter that is brought under his consideration or becomes known to him as a state minister except as may be required for the due discharge of his duties as such minister.

The salaries and allowances of ministers are determined by the state legislature from time to time. A minister gets the salary and allowances which are payable to a member of the state legislature. Additionally, he gets a sumptuary allowance (according to his rank), free accommodation, travelling allowance, medical facilities, etc.

RESPONSIBILITY OF MINISTERS

Collective Responsibility

The fundamental principle underlying the working of parliamentary system of government is the principle of collective responsibility. Article 164 clearly states that the council of ministers is collectively responsible to the legislative assembly of the state. This means that all the ministers own joint responsibility to the legislative assembly for all their acts of omission and commission. They work as a team and swim or sink together. When the legislative assembly passes a no-confidence motion against the council of ministers, all the ministers have to resign including those ministers who are from the legislative council². Alternatively, the council of ministers can advise the governor to dissolve the legislative assembly on the ground that the House does not represent the views of the electorate faithfully and call for fresh elections. The governor may not oblige the council of ministers which has lost the confidence of the legislative assembly.

The principle of collective responsibility also means that the cabinet decisions bind all cabinet ministers (and other ministers) even if they deferred in the cabinet meeting. It is the duty of every minister to stand by the cabinet decisions and support them both within and outside the state legislature. If any minister disagrees with a cabinet decision and is not prepared to defend it, he must resign. Several ministers have resigned in the past owing to their differences with the cabinet.

Individual Responsibility

Article 164 also contains the principle of individual responsibility. It states that the ministers hold office during the pleasure of the governor. This means that the governor can remove a minister at a time when the council of ministers enjoys the confidence of the legislative assembly. But, the governor can remove a minister only on the advice of the chief minister. In case of difference of opinion or dissatisfaction with the performance of a minister, the chief minister can ask him to resign or advise the governor to dismiss him. By exercising this power, the chief minister can ensure the realisation of the rule of collective responsibility.

No Legal Responsibility

As at the Centre, there is no provision in the Constitution for the system of

legal responsibility of the minister in the states. It is not required that an order of the governor for a public act should be countersigned by a minister. Moreover, the courts are barred from enquiring into the nature of advice rendered by the ministers to the governor.

COMPOSITION OF THE COUNCIL OF MINISTERS

The Constitution does not specify the size of the state council of ministers or the ranking of ministers. They are determined by the chief minister according to the exigencies of the time and requirements of the situation.

Like at the Centre, in the states too, the council of ministers consists of three categories of ministers, namely, cabinet ministers, ministers of state, and deputy ministers. The difference between them lies in their respective ranks, emoluments, and political importance. At the top of all these ministers stands the chief minister—supreme governing authority in the state.

The cabinet ministers head the important departments of the state government like home, education, finance, agriculture and so forth³. They are members of the cabinet, attend its meetings and play an important role in deciding policies. Thus, their responsibilities extend over the entire gamut of state government.

The ministers of state can either be given independent charge of departments or can be attached to cabinet ministers. However, they are not members of the cabinet and do not attend the cabinet meetings unless specially invited when something related to their departments are considered by the cabinet.

Next in rank are the deputy ministers. They are not given independent charge of departments. They are attached to the cabinet ministers and assist them in their administrative, political and parliamentary duties. They are not members of the cabinet and do not attend cabinet meetings.

At times, the council of ministers may also include a deputy chief minister. The deputy chief ministers are appointed mostly for local political reasons.

CABINET

A smaller body called *cabinet* is the nucleus of the council of ministers. It

consists of only the cabinet ministers. It is the real centre of authority in the state government. It performs the following role:

1. It is the highest decisionmaking authority in the politico-administrative system of a state.
2. It is the chief policy formulating body of the state government.
3. It is the supreme executive authority of the state government.
4. It is the chief coordinator of state administration.
5. It is an advisory body to the governor.
6. It is the chief crisis manager and thus deals with all emergency situations.
7. It deals with all major legislative and financial matters.
8. It exercises control over higher appointments like constitutional authorities and senior secretariat administrators.

Cabinet Committees

The cabinet works through various committees called cabinet committees. They are of two types—standing and ad hoc. The former are of a permanent nature while the latter are of a temporary nature.

They are set up by the chief minister according to the exigencies of the time and requirements of the situation. Hence, their number, nomenclature and composition varies from time to time.

They not only sort out issues and formulate proposals for the consideration of the cabinet but also take decisions. However, the cabinet can review their decisions.

Table 32.1 Articles Related to State Council of Ministers at a Glance

Article No.	Subject-matter
163.	Council of Ministers to aid and advise Governor
164.	Other provisions as to Ministers
166.	Conduct of business of the Government of a State
	Duties of Chief Minister as respects the furnishing of information