

Constitution of India

Module 4

Government Machinery in the States

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Module Syllabus

4.1	The State executive, the Governor, the council of ministers, the Chief minister, advocate general, union Territories.
4.2	The State Legislature, composition, qualification and disqualification of membership, functions.
4.3	The state judiciary, the high court, jurisdiction, writs jurisdiction.



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PART VI: THE STATES

Chapter 2: The Executive



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The State Executive

- State Executive consist of Governor, Council of Ministers, Chief Minister and Advocate General; and their subordinates.
- The State government, like Union government, consists of a titular head and a real head The titular head (*de jure*) of the State is the Governor and the real head (*de facto*) is the Chief Minister.
- All the 28 states in India have the uniform structure of government.




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The Governor

- The Governor is the head of the state.
- Executive power** is vested in the Governor. The power can be exercised directly or through officers subordinate to them (Article 154).
- Article 164 provides that the **Chief Minister shall be appointed by the Governor** and other ministers are to be appointed by the Governor on the recommendations of the Chief Minister. They hold office 'during the pleasure of the Governor'.
- Power of Governor extends to grant pardons, etc., and to suspend, remit or commute sentences in certain cases. (Article 161)
- Governor is the **Chancellor of all the Universities**.



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The Governor

Qualifications of Governor (Article 157)

(a) is a **citizen of India**,


(b) has completed the age of **thirty-five years**.

Conditions of Governor's Office (Article 158)

(1) The Governor **shall not be a member of either House of Parliament or of a House of the Legislature of any State**

(2) The Governor **shall not hold any other office of profit**.

(3) The Governor shall be entitled without payment of rent to the use of his official residences and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law



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The Governor

Appointment of the Governor (Article 155)


The Governor of a State is **appointed by the President** by warrant under their hand and seal.

Term of Office of the Governor (Article 156)

(1) The Governor shall hold office during **the pleasure of the President**.

(2) The Governor may, by writing under his hand addressed to the President, resign his office.

(3) A Governor shall hold office for a term of **five years** from the date on which he enters upon his office.



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The Governor



Shri Arif Mohammad Khan
(Governor of Kerala)



Kerala Raj Bhavan




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Council of Ministers

- The Council of Ministers comprises the Chief Minister and other ministers.
- Council of Ministers with the Chief Minister at the head **aid and advise the Governor in the exercise of their functions**
- The Council of Ministers are collectively responsible to the **Legislative Assembly (Niyamasabha)**. That is, the Council can remain in power as long as it enjoys the confidence of the LA.
- The importance of the Council of Ministers is that the **Governor cannot exercise his powers without the advice of the Council**.
- the total number of Ministers in the Council of Ministers, including the Chief Minister, **shall not exceed fifteen per cent of the total number of members of the Legislative Assembly**.




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Council of Ministers

Single tier System

Consisting of Cabinet Ministers






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Chief Minister

- The Chief Minister is the **head of the Council of Ministers** and is the **leader of the state**.
- The Chief Minister is **appointed by the Governor**. Usually the Governor appoints the leader of the party that enjoys the majority support of the Legislative Assembly as the CM.
- The CM like other ministers **needs to be a member of LA**. However, he need not to be a member of LA at the time of appointment.
- CM is the **leader of the LA**
- The CM enjoys the status of **primus inter pares** with respect to his Council of Ministers.



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Chief Minister

Roles of Chief Minister

- Head of the Council of Ministers**
- Channel of communication** between the Council of Ministers and the Governor
- They are a **member of the Inter-State Council and the Governing Council of NITI Aayog**, both headed by the PM.



Shri Pinarayi Vijayan



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Advocate-General

- The Advocate-General is the State Government's chief legal advisor, and is its principal barrister in the Courts.
- They must be a person qualified to be appointed as a Judge of the High Court.
- They also perform other legal duties assigned to them by the Governor.
- Advocate-General is appointed by the President.
- They can take part in the Legislative Assembly and speak, but cannot vote.



Shri Gopalakrishna Kurup



PART VI: THE STATES

Chapter 3: The State Legislature



The Legislature

- Article 168 provides that, 'For every State there shall be a Legislature which shall consist of the Governor and...'.
 - 'For Andhra Pradesh, Bihar, Madhya Pradesh, Maharashtra, Karnataka, Tamil Nadu, Telangana and Uttar Pradesh two houses' (Legislative Council and Legislative Assembly) [Bicameral legislature]
 - 'For other states one house' (Legislative Assembly) [Unicameral Legislature]
- The Legislative Assembly can decide whether to establish or not to establish Legislative Council in the state, and the Parliament passes the decision for the same.



The Legislature



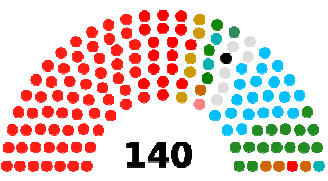
Kerala Niyamasabha Mandiram



The Legislature


Composition of Legislative Assembly


- The Legislative Assembly of each State shall consist of **not more than five hundred, and not less than sixty**, members chosen by direct election from territorial constituencies in the State.



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Kerala 15th Legislative Assembly





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The Legislature

Composition of Legislative Council

- The total number of members in the Legislative Council **shall not exceed one third of the total number of members in the Legislative Assembly** of that State
- One-twelfth** shall be elected by persons who have been for **at least three years** **graduates** of any university in the territory of India
- One-twelfth** shall be elected by persons who have been **engaged in teaching in such educational institutions** within the state at least 3 years.
- One-third** shall be elected by the members of the LA of the state from amongst persons who are not members of the Assembly
- The remainder **one-sixth** shall be **nominated by the Governor** from persons having special knowledge or practical experience in literature, science, art, cooperative movement and social service.



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The Legislature

Qualification of Membership

- A **citizen of India**
- Completed **25 years of age**
- Qualified under a **law of Parliament**

Disqualification of Membership

- Is of **unsound mind** or;
- Holds any office of profit** under any government—Union or State or;
- Is an **undischarged insolvent** or;
- Is **not a citizen of India** or voluntarily renounced the Indian citizenship or;
- Disqualified under any law** made by the Parliament.



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The Legislature

Functions of the Legislature

- Basically the Legislature is also a **law-making body**.
- There are three lists – Union List, State List and the Concurrent List. **The LA can make laws in State List.**
- Along with the **State Legislatures**, the **Parliament is empowered to make laws on the Concurrent List.**



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PART VI: THE STATES
Chapter 5: The Judiciary



High Court

- A high court exist for each State. The high court is at the head of the judicial administration of a State.
- At present there are 25 high courts in India. (some High courts have jurisdiction over other states and Uts. Ex. Kerala High Court has jurisdiction over Lakshadweep).
- High court consists of a Chief Justice and other judges.
- High courts to be Courts of Record and so the high courts also enjoy the same powers as the Supreme Court.



Chief Justice of Kerala S. Manikumar



Jurisdiction of High Court

1. Writ Jurisdiction

- The high courts also have the power to issue writs like the Supreme Court. The writ issued by the high courts is applicable only within its territorial limits.

Writ Jurisdiction: A Comparison

Supreme Court	High Courts
Applicable throughout India	Applicable only within its territorial limits of the State
A fundamental right	Not a fundamental right
Only for enforcing fundamental right	Both for enforcing fundamental rights and other matters
In case fundamental right is infringed, no discretion to court	Have discretion



Jurisdiction of High Court

2. Power of Superintendence Over Subordinate Courts

- The high court has the power of 'superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction' (Article 227). It is noteworthy to mention here that the Supreme Court does not have the power to superintendence, although it is the apex court.

3. Appellate and Revisional Jurisdiction

- An aggrieved party can file an appeal to the High Court from every decree passed in appeal by any court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.



PART VIII: THE UNION TERRITORIES



Union Territories

- Union territories are those territories that are under the **direct administrative control of the Union Government.**



Mahe is the district of Puducherry and is the smallest district in India

- All the 8 UTs in India **do not have the uniform structure of government.**



Union Territories

Reasons of retaining Union Territories

1. The territories are large in size but **not larger to be established as a state.** They may not have **capability to generate enough resources** for their administration.
2. Certain territories are **strategically important** Ex. Andaman and Nicobar Islands.
3. Certain territories are **ecologically sensitive** and so are placed under the union government. Example is Lakshadweep.
4. Some of the territories were **under the rule of a colonial master other than British.** For instance, Puducherry was under the French; Goa, Daman, Diu and Nagar Haveli were ruled by the Portuguese. They got integrated with India on different dates and under different legal arrangement.
5. **Chandigarh** is administered as a union territory as it serves the capital of both Punjab and Haryana.



Union Territories

- Article 239 provides the **President shall administer these territories by appointing an administrator.** The designation of such administrator may be specified by the President.
- The administrators appointed for union territory of Puducherry and National Capital Territory (Delhi) are known as **Lieutenant Governor.**
- In Puducherry, the **President does not have the power** to 'make regulations for the peace, progress and good government' during when the legislature of the Puducherry remains alive. President shall have the power only when the legislature is suspended or dissolved.
- Article 240 provides for the administration of the union territories of the Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli, and Daman and Diu. **The President has the power to 'make regulations for the peace, progress and good government' of these union territory.**



END OF MODULE 4



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