**MODULE 4**

The State Executive

The State Legislature

The State Judiciary

**THE STATE EXECUTIVE**

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

**GOVERNOR**

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 of a State is appointed by the President under his hand and seal. The President exercises the power to appoint the Governor only on the advice of the union Council of Ministers. The Governor holds office during the pleasure of the President—Article 156. The constitution does not specify on what grounds the President may withdraw his pleasure. The President may ‘withdraw’ his pleasure on the advice of the union Council of Ministers. Thus, in effect the Governor is appointed by and holds office during the pleasure of the Prime Minister. This has resulted in the rise of controversies.

**QUALIFICATIONS FOR THE APPOINTMENT**

To be appointed as Governor any person need to be a citizen of India and must have completed thirty-five years of age (Article 157).

According to Article 158, the Governor must be a member of state legislature or a member of

Parliament. Here, it is to be noted that the constitution does not bar any member of state legislature or

a member of Parliament being appointed as Governor. But if a member of state legislature or a member of Parliament is appointed as the Governor, then his seat in the House will automatically fall vacant on the date on which he enters upon the office of the Governor.

Article 158 (2) provides that the Governor must not hold any office of profit during his term as

Governor. The Governor is entitled to a rent-free official residence, the residence of the Governor is known as *Raj Bhavan*. The emoluments, allowances and privileges of the Governor are as fixed by the law of the Parliament.

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

This is to ensure the independence and the dignity of the office of the Governor.

Ie,

1. He should be a citizen of India.
2. He should have completed the age of 35 years.
3. He should not be a member of either House of Parliament or a House of the state legislature.
4. He should not hold any other office of profit

**TERM OF OFFICE**

The Governor may at any time resign from office by writing under his hand addressed to the President. Subjected to these conditions the Governor holds office for a period of five years from the date on which he enters upon the office. However, the Governor will continue to remain in office, even after the expiration of the term, until his successor enters upon office.

In case of any casual vacancy of the office of the Governor on any other reason than removal,

Resignation or death then the President has the power to determine how the functions of the office (Article 160).

**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

**. 1. Executive powers or Administrative Powers**

Administrative powers are those are required for the purpose of the making and implementing policy,law and administrating the departments of the government. The administrative powers of the Governor

include:

1. The power to appoint and remove persons to various offices under the Government of India: All the constitutional offices such as Chief Minister, Council of Ministers, members of State Public Service Commission, etc.

2. The Governor appoints the Advocate-General for the State and he holds office during the pleasure of the Governor. The Governor also has the powers to determine the remuneration to be paid to him.

3. According to Article 166, all the executive actions of the State have to be expressed to be taken in the name of the Governor.

4. The Governor has the powers to make rules for the more convenient transaction of the business of the government of the State

5. According to Article 167, the Governor has the power to call for reports about the affairs of the State and its administration.

**2. Legislative powers:**

A governor is an integral part of the state legislature. In that capacity, he

has the following legislative powers and functions:

1. According to Article 167, the Governor is part of state legislature.

2. The Governor has the powers to nominate one member from the Anglo-Indian Community to Legislative Assembly (Article 333). The Governor has power to nominate one-sixth of the total members of the Legislative Council of the State. The persons who are eminent in literature, science, art,cooperative movement and social service.

3. According to Article 213, the Governor has the power to promulgate ordinances. The power of the Governor to issue ordinance is similar to that of the President in all respects except one. In case the ordinance contained any matter, which would have required the Governor to reserve a bill containing the same matter for the consideration of the President, then the Governor can issue the ordinance only with the consent of the President.

4. The Governor has the powers to summon and prorogue the sessions of the state legislatures. According to Article 172, the Governor must ensure that at least two sessions of the Legislature takes place in a year. The Governor can dissolve the Legislative Assembly. However, the Legislative Council is not dissolved as it is a permanent House.

5. Like the President, the Governor also has the powers to address the Houses of Legislature and

send messages to the Houses. Article 175 confers on him the right of Governor to address and

send messages to the House or Houses. Article 176 provides for the special address by the Governor.

6. Certain bills can be introduced in the state legislature only on the previous recommendation of the President. For instance, the Money Bills have to be introduced only on the previous recommendation of the Governor.

7. Assent to Bills and Veto: Like in the union Parliament, any bill passed by the state legislature need to be presented to the Governor for his assent. Only upon the Governor giving his assent, the bill becomes a law. When a bill is presented to the Governor the Governor may declare that he:

(a) Gives his assent, then the bill becomes a law or;

(b) Withholds his assent, which means he vetoes the bill and the bill is dead or;

(c) Returns a non-Money Bill for the reconsideration of the House or;Reserves the bill for the consideration of the President

**3. 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

**4. Judicial powers:**

The judicial powers and functions of the governor are:

1. He can grant pardons, reprives, 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.

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

***Ordinance-Making Power***

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 bicameral 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.

***Pardoning Powers***

1. Articles 72, 145 and 161 of the constitution deals with the pardoning powers of the Governor. According
2. to Article 161, the Governor has the powers to grant remission, respite, reprieve and pardon or commute
3. the sentence with respect to any offence committed against a law enacted by the state legislature.
4. This power is subjected to Article 145. In case a convict has appealed to the Governor seeking and
5. has also appealed to the Supreme Court against the orders of the high court, then the Governor shall not
6. make any order on the petition if the Supreme Court had admitted the appeal. The Supreme Court has
7. the powers to strike down the order made by the Governor in such cases.
8. According to Article 72 (3), the Governor has the power to suspend, commute or remit a death sentence.
9. But he cannot grant pardon in case of death sentence. Only the President has the power to grant
10. pardon in case of death sentence.

**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.

Article 163, provides for the Council of Ministers with Chief Minister as its head. The Council of Ministers

comprises the Chief Minister and other ministers.

***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. 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.

***QUALIFICATION FOR THE APPOINTMENT***

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.

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.

***TERM***

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.

***SALARY***

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 the state and proposals for legislation;*

*(ii) to furnish such information relating to the administration of t affairs of the state and proposals for legislation as the govern may call for; and*

*(iii) if the governor so requires, to submit for the consideration of t council of ministers any matter on which a decision has be taken by a minister but which has not been considered by t*

*council.*

(b) He advises the governor with regard to the appointment of important officials like advocate general, chairman and members of the state public service commission, state election

commissioner, and so on.

**In Relation to State Legislature**

The Chief Minister enjoys the following powers as the leader of the

house:

(a) He advises the governor with regard to the summoning and proroguing of the sessions of the state legislature.

(b) He can recommend the dissolution of the legislative assembly to the governor at any time.

(c) He announces the government policies on the floor of the house.

**Other Powers and Functions**

In addition, the Chief Minister also performs the following functions:

(a) He is the chairman of the State Planning Board.

(b) He acts as a vice-chairman of the concerned zonal council by rotation, holding office for a period of one year at a time.8

(c) He is a member of the Inter-State Council and the Governing Council of NITI Aayog, both headed by the prime minister.

(d) He is the chief spokesman of the state government.

(e) He is the crisis manager-in-chief at the political level during

emergencies.

(f) As a leader of the state, he meets various sections of the people and receives memoranda from them regarding their problems, and so on.

(g) He is the political head of the services. Thus, he plays a very significant and highly crucial role in the state administration. However, the discretionary powers enjoyed by

the governor reduces to some extent the power, authority, influence, prestige and role of the Chief Minister in the state administration.

***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 a minister but which has not been

considered by the council.

**STATE COUNCIL OF MINISTERS**

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.

* 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.
* Article 163: 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

***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.

* **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.**

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.

***SALARY OF MINISTERS***

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**

all the ministers own joint responsibility to the legislative

assembly for all their acts of omission and commission. It is the duty of every minister to stand by the cabinet decisions and support them both within and outside the state legislature.

**Individual Responsibility**

Article 164 also contains the principle of individual responsibility. 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 advice the governor to dismiss

him.

**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.

**ADVOCATE GENERAL OF THE STATE**

* The Constitution (Article 165) has provided for the office of the advocate general for the states.
* He is the highest law officer in the state.

Thus he corresponds to the Attorney General of India.

***APPOINTMENT AND TERM***

The advocate general is appointed by the governor. He must be a person who is qualified to be appointed a judge of a high court. In other words, he must be a citizen of India and must have held a judicial office2 for ten years or been an advocate of a high court for ten years

***TERM***

The term of office of the advocate general is not fixed by the Constitution. He holds office during the pleasure of the governor. This means that he may be removed by

the governor at any time. He may also quit his office by submitting his resignation to the governor. The remuneration of the advocate general is not fixed by the

Constitution. He receives such remuneration as the governor may Determine.

***DUTIES AND FUNCTIONS***

As the chief law officer of the government in the state, the duties

of the advocate general include the following:

1. To give advice to the government of the state upon such

legal matters which are referred to him by the governor.

2. To perform such other duties of a legal character that are

assigned to him by the governor.

3. To discharge the functions conferred on him by the

Constitution or any other law.

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

***UNION TERRITORIES***

Article 1 describes India, that is, Bharat as a ‘Union of States’ rather than a ‘Federation of States’. This provision deals with two things: one, name of the country; and two, type of polity.

According to Article 1, the territory of India can be classified into

three categories:

1. Territories of the states

2. Union territories

3. Territories that may be acquired by the Government of India

at any time.

The names of states and union territories and their territorial

extent are mentioned in the first schedule of the Constitution. At

present, there are 28 states and 9 union territories.

**The union territories, on the other hand, are those areas which are under the direct control and administration of the Central government. Hence, they are also known as ‘centrally administered territories**

* **Articles 239 to 241 in Part VIII of the Constitution deal with the union territories.**
* **Every union territory is administered by the President acting through an administrator appointed by him.**
* **An administrator of a union territory is an agent of the President and not head of state like a governor.**
* **The President can specify the designation of an administrator; it may be Lieutenant Governor or Chief Commissioner or Administrator.**
* **There are 8 Union territories in India. The list for the same is given below:**

**1. Andaman and Nicobar Islands**

**2. Dadra and Nagar Haveli and Daman and Diu**

**3. Chandigarh**

**4. Lakshadweep**

**5. Puducherry**

**6. Delhi**

**7. Ladakh**

**8. Jammu and Kashmir**

***HIGH COURTS FOR UNION TERRITORIES***

According to Article 241, the Parliament has the power to constitute a high court for a union territory by enacting a law. Similarly, it can also extend the jurisdiction of any high court over the union territory.

***STATE LEGISLATURE***

Articles 168 to 212 in Part VI of the Constitution deal with the

organisation, composition, duration, officers, procedures, privileges,

powers and so on of the state legislature.

**ORGANISATION OF STATE LEGISLATURE**

There is no uniformity in the organisation of state legislatures. Most of

the states have an unicameral system, while others have a bicameral

system. At present (2019), only six states have two Houses

(bicameral). These are Andhra Pradesh, Telangana, Uttar Pradesh,

Bihar, Maharashtra and Karnataka.

The twenty-two states have unicameral system. Here, the state

legislature consists of the governor and the legislative assembly. In

the states having bicameral system, the state legislature consists of

the governor, the legislative council and the legislative assembly. The

legislative council (Vidhan Parishad) is the upper house (second

chamber or house of elders), while the legislative assembly (Vidhan

Sabha) is the lower house (first chamber or popular house).

**Legislative Assembly**

**Composition of Legislative Assembly**

**Strength**

**The legislative assembly consists of representatives directly elected by the people on the basis of universal adult franchise. Its maximum strength is fixed at 500 and minimum strength at 60. It means that its strength varies from 60 to 500 depending on the population size of the state.**

**Reservation of seats for SCs and STs**

**The Constitution provided for the reservation of seats for scheduled castes and scheduled tribes in the assembly of each state on the basis of population ratios.**

**Nominated Member**

The governor can nominate one member from the Anglo-Indian community, if the community is not adequately represented in the assembly.

**Territorial Constituencies**

For the purpose of holding direct elections to the assembly, each state is divided into territorial constituencies. The demarcation of these constituencies is done in such a manner that the ratio between the population of each constituency and the number of seats allotted to it

isthe same throughout the state.

**Readjustment after each census**

After each census, a readjustment is to be made in the **(a)** total number of seats in the assembly of each state and **(b)** the division of each state into territorial constituencies

***QUALIFICATION OF MEMBERS***

To be a member of state Legislative Assembly a person must be:

(a) A citizen of India

(b) Completed 25 years of age

(c) Qualified under a law of Parliament

***Duration of Legislative Assembly***

The Legislative Assembly has a term of five years from the date appointed for the first meeting. However, the term of the Assembly can be extended by six months during a proclamation of emergency. The power to extend the term of the Assembly is vested in the Parliament. The Parliament by enacting a law extends the term

**Legislative Council**

**Composition of Legislative Council**

**Strength**

Unlike the members of the legislative assembly, the members of the legislative council are indirectly elected. The maximum strength of the council is fixed at one-third of the total strength of the assembly and the minimum strength is fixed at 40. It means that the size of the

council depends on the size of the assembly of the concerned state.

***QUALIFICATION OF MEMBERS***

To be a member of state Legislative Council a person must be:

(a) A citizen of India

(b) Completed 30 years of age

(c) Qualified under a law of Parliament

***Duration of the Legislative Council***

According to Article 172 (2), the Legislative Council is not subject to dissolution. The members have

term of six years and one-third of the members retire on the expiry of every second year.

The Legislative Assembly may be dissolved by the Governor before the expiry of the five-year term if:

•• The Council of Ministers with majority support of the Assembly advises him to do so or;

•• A proclamation of constitutional emergency is made under Article 356 or;

•• The incumbent Council of Minsters resign and there does not exist an opportunity to form a new

government or;

•• After the election no party secured majority required to form the government

***DISQUALIFICATION OF MEMBER: ARTICLE 191***

Disqualification of membership of state legislature is given by Articles 191 (1) and 191 (2). According to

Article 191 (1), a person is disqualified for being chosen as and for being a member of state legislature

if he:

1. Is of unsound mind or;

2. Holds any office of profit under any government—Union or State or;

3. Is an undischarged insolvent or;

4. Is not a citizen of India or voluntarily renounced the Indian citizenship or;

5. Disqualified under any law made by the Parliament.

If any question arises as to whether a member is subjected to disqualification on the above grounds,

then the Governor has the power to decide. The Governor must obtain the opinion of the Election

Commission before he makes the decision.

Article 191 (2) provides for the disqualification on ground of defection. In case of disqualification on

ground of defection the Speaker or Chairman has the power to decide and the decision is final. For detail

of defection refer the chapter on union legislature.

***. PRESIDING OFFICERS OF STATE LEGISLATURE***

* Each House of state legislature has its own presiding officer.
* There is a Speaker and a Deputy Speaker for the legislative assembly. The Speaker and Deputy Speaker are elected by the assembly itself from amongst its members.
* A Chairman and a Deputy Chairman for the legislative council.
* Chairman and Deputy Chairman are elected by the council itself from amongst its members

***POWERS AND FUNCTIONS OF THE STATE LEGISLATURE***

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

The State Judiciary

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

**HIGH COURT**

The Constitution of India provides for a high court for each state, but the Seventh Amendment Act of 1956 authorised the Parliament to establish a common high court for two or more

states or for two or more states and a union territory. The territorial jurisdiction of a high court is co-terminus with the territory of a state. Similarly, the territorial jurisdiction of a common high court is co-terminus with the territories of the concerned states and union

territory.

At present (2019), there are 25 high courts in the country. Out of them, only three high courts have jurisdiction over more than one state. Among the nine union territories, Delhi alone has a

separate high court (since 1966). The union territories of Jammu and Kashmir and Ladakh have a common high court. The other union territories fall under the jurisdiction of different state high

courts.

Articles 214 to 231 in Part VI of the Constitution deal with the organisation, independence, jurisdiction, powers, procedures and so on of the high courts

***COMPOSITION AND APPOINTMENT***

Every high court (whether exclusive or common) consists of a chief justice and such other judges as the president may from time to time deem necessary to appoint. Thus, the Constitution does

not specify the strength of a high court and leaves it to the discretion of the president. Accordingly, the President determines the strength of a high court from time to time depending upon its workload.

***Appointment of Judges***

The judges of a high court are appointed by the President. The

chief justice is appointed by the President after consultation with

the chief justice of India and the governor of the state concerned.

***Qualifications of Judges***

A person to be appointed as a judge of a high court, should have

the following qualifications:

1. He should be a citizen of India.

2. (a) He should have held a judicial office in the territory of

India for ten years; or

(b) He should have been an advocate of a high court (or

high courts in succession) for ten years.

**JURISDICTION AND POWERS OF HIGH COURT**

1. Original jurisdiction.

2. Writ jurisdiction.

3. Appellate jurisdiction.

4. Supervisory jurisdiction.

5. Control over subordinate courts.

6. A court of record.

7. Power of judicial review.

***Original Jurisdiction:.*** It means the power of a high court to hear disputes in the first

instance, not by way of appeal. It extends to the following:

(a) Matters of admirality and contempt of court.

(b) Disputes relating to the election of members of Parliament

and state legislatures.

(c) Regarding revenue matter or an act ordered or done in revenue collection.

(d) Enforcement of fundamental rights of citizens.

(e) Cases ordered to be transferred from a subordinate court involving the interpretation of the Constitution to its own file.

(f) The four high courts (i.e., Calcutta, Bombay, Madras and Delhi High Courts) have original civil jurisdiction in cases of higher value.

***Writ Jurisdiction:*** Article 226 of the Constitution empowers a high court to issue writs including habeas corpus, mandamus, certiorari, prohibition and quo warranto for the enforcement of the fundamental rights of the citizens and for any other purpose.when the fundamental rights of a citizen are violated, the aggrieved party has the option of moving either the high court or the Supreme Court directly.

The high court can issue writs to any person, authority and government not only within its territorial jurisdiction but also outside its territorial jurisdiction

***Appellate Jurisdiction:*** A high court is primarily a court of appeal. It hears appeals against

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

***Supervisory Jurisdiction:*** A high court has the power of superintendence over all courts and

tribunals functioning in its territorial jurisdiction (except military courts or tribunals). Thus, it may–

(a) call for returns from them;

(b) make and issue, general rules and prescribe forms for

regulating the practice and proceedings of them;

(c) prescribe forms in which books, entries and accounts are to

be kept by them; and

(d) settle the fees payable to the sheriff, clerks, officers and legal

practitioners of them.

***Control over Subordinate Courts*:** In addition to its appellate jurisdiction and supervisory jurisdiction over the subordinate courts as mentioned above, a high court has

an administrative control and other powers over them. These

include the following:

(a) It is consulted by the governor in the matters of appointment, posting and promotion of district judges and in the appointments of persons to the judicial service of the state

(other than district judges).

(b) It deals with the matters of posting, promotion, grant of leave, transfers and discipline of the members of the judicial service of the state (other than district judges).

(c) It can withdraw a case pending in a subordinate court if it involves a substantial question of law that require the interpretation of the Constitution. It can then either dispose of

the case itself or determine the question of law and return the case to the subordinate court with its judgement.

(d) Its law is binding on all subordinate courts functioning within its territorial jurisdiction in the same sense as the law declared by the Supreme Court is binding on all courts in India.

***A Court of Record:*** The judgments, proceedings and acts of the high courts are recorded for perpetual memory and testimony**.** As a court of record, a high court has two powers:

(a) The judgements, proceedings and acts of the high courts are recorded for perpetual memory and testimony. These records are admitted to be of evidentiary value and cannot be

questioned when produced before any subordinate court. They are recognised as legal precedents and legal references.

(b) It has power to punish for contempt of court, either with simple imprisonment or with fine or with both

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