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INDIAN POLITY AND CONSTITUTION - II

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1 CHAPTER

Governor



Constitutional Provisions

- **Articles:** 153 to 161 of the constitution of India
- **Part:** VI of the constitution of India
- **Important Articles related to Governor**



Article	Provisions
153	Governors of State
154	Executive Power of State
155	Appointment of Governor
156	Term of office of Governor
157	Qualifications for appointment as Governor
158	Conditions of Governor's Office
159	Oath and affirmation by the Governor
160	Discharge of the functions of the Governor in certain contingencies.
161	Power of Governor to grant pardons, etc., and to suspend, remit or commute sentences in certain cases

Constitutional Position

- **dual role:**
 - State Government's **constitutional head**
 - a **link between the central and state governments.**
- executive leader of a state
- operates on the **recommendation of the CoM of State.**
- All state **executive activities are formally taken in the Governor's name.**
- **represents the Centre in the State** as a nominee of the President
- **serves as a channel of communication** and interaction between the State and the Centre.
- responsible to **keep the centre up to date** on the state's activities.



Appointment of Governor

- **Appointed by:** The President by warrant under his hand and seal.
- **Article 153:** Each state should have its own governor.
- **7th amendment Act 1956:** Appointment of the same individual as Governor of one or more states.
 - He acts on the **recommendations of the CoM of individual states** while Acting as governor for one or more states.



Qualifications

In order to be appointed as Governor, a person

- Must be a **citizen of India**.
- Must have completed the **age of 35 years**.

In addition, there are **two conventions** with regard to appointment of the Governor:

- He **Must not belong to the state where he is appointed**
- **Consult the CM of the state where to be appointed.**



Term of Office

- **Term: 5 years** at the **pleasure of the President**.
 - He may be requested to stay on for longer than the usual five years, until his replacement takes up.
- **Transfer:** The President can also transfer the Governor from one state to another.
- **Resignation:** By writing to the President, the Governor may resign at any time.
- **Unforeseen Circumstances:** The Constitution makes no provision, such as the death of the Governor, the President may make whatever measures he deems appropriate for the fulfilment of the Governor's tasks (Article 160).
- The **Rajasthan HC** has ruled that the **Governor's powers might be temporarily delegated to the Chief Justice of the HC**.



Conditions of Governor's Office

- **cannot be a member of Parliament** or a State Legislature, and if he or she is, then has to vacate his seat before joining as Governor.
- **prohibited from holding any other office of Profit**
- **official residence without rent.**
- entitled to the **emoluments, allowances, and privileges that Parliament may designate**.
 - Governor of **two or more states**, his **emoluments are divided** among them in the proportions determined by the President.
 - **During his term of service**, his emoluments and allowances shall **not be reduced**.
- **must take an oath** or affirmation **administered by the Chief Justice of the respective state HC**, or in his absence, the most senior judge of that court available.



Salary

- draws a **salary** of Rs.3,50,000 per month charged on **the Consolidated Fund of the State**
- entitled to a **rent-free official residence** and other allowances.
- **not subject to the vote** of the State Legislature.



Immunities to Governor

The Constitution grants certain immunities to a Governor, such as

- **Article 361: not liable to any court for the exercise and performance of his powers and duties**, or for any act done or said to be done in the exercise and performance of such powers and responsibilities.
- During his tenure
 - **no criminal proceedings can be initiated** or continued in any court.
 - **no process for his arrest** or imprisonment can be issued by any court.



- **Civil proceedings against a Governor** in which relief is requested can be brought in court while the Governor is still in office, but **only after two months have passed after he was given adequate notice in writing of the proceedings in full.**

Powers and Functions of the Governor

Executive Powers

- **in charge of the state's executive power:** In conformity with the Constitution, he **exercises it** himself or via officer's subordinate to him.
- **extends to all subjects** over which the State Legislature has legislative authority.
- **subject to the President's executive authority** on subjects stated in the **Concurrent List.**
- **All executive Measures** of the state government are in his name.
- **authority to establish procedures** for the authentication of orders and instructions issued and implemented in his name.
- **establishes standards** for the efficient conduct of **government operations** and the distribution of responsibilities among ministers.



Powers with respect to Some States:

Jharkhand, Madhya Pradesh, Chhattisgarh and Odisha	94th Constitutional Amendment Act, 2006	ensure that a Minister is appointed to oversee tribal care.
Assam	Sixth Schedule	administration of tribal territories

- **appointment and patronage rights:**
 - **Advocate General of the State**
 - **Chairman and members of State Public Service Commission** (can be removed by the President only)
 - **State Election Commission and the State Finance Commission (Article 243K) (243K).**
- **Can demand any information from the CM** of the State regarding administrative matters and legislative measures.
- **submits a report to the President**, along with suggestions, on the **breakdown of constitutional machinery** and the **imposition of President's Rule** in a State
- serves as the **Chancellor of State Universities.**
- **Ministers hold office** during the pleasure of the Governor.
- **bring to the CoM any topic** for reconsideration
- It is the **CM's responsibility to report to the Governor any decisions of the CoM pertaining to the administration** of the State and legislative measures, as well as to supply any information requested by the Government.

Legislative Powers

- **nominate one member** to the **State's Lower House** and a **few members** to the **State's Upper House.**
 - **one member of the Anglo-Indian community** to the State Legislative Assembly if they are underrepresented in that body.
 - **one-sixth** of the total number of **members** of the State Legislative Council



- can call a **special session of the State Legislature**, prorogue one or both Houses, or dissolve the Legislative Assembly.
- **addresses the House or Houses of the State Legislature** singly or jointly
 - make a **speech** at the start of each **new session** and immediately following a general election to the Assembly, in which he lays out his **Government's strategy for the coming year**.
- Can **communicate with any House** of the State Legislature.
- Before becoming law, **every bill enacted by the State Legislature must gain the Governor's consent**. the Governor can:
 - He **can give his consent** to the Bill;
 - **Withholds assent**; or
 - He may **reserve the Bill for the consideration of the President** if:
 - **Ultra-vires**, that is, **against** the provisions of the **Constitution**.
 - **Opposed to DPSPs**.
 - **Against the larger interest of the country**.
 - **Of grave national importance**.
 - Dealing with compulsory acquisition of property
 - He **can return it to the Legislature**, if it is not a Money Bill, for reconsideration, suggesting alterations and modifications in part or in the whole.
 - But such **Bills when passed again** by the Legislature **must receive the assent** of the Governor, which means that the Governor cannot withhold his assent to a Bill if it is passed a second time by the State Legislature (**Article 200**).
- In the state legislature **presents reports of**:
 - **State Public Service Commission (Article 323)**
 - **State Finance Commission (Article 243(1))**
 - **Comptroller and Auditor General (Article 151)**
- may resolve a subject pertaining to the **disqualification of a member of the Legislature** on the recommendation of the **Election Commission** if that person's **election is contested through a petition** by some voter or voters in his State (**Article 192**).

Financial Powers

- **No Money Bill or Financial Bill can be introduced** in the state legislature **without the Governor's recommendations**.
- Only on his suggestion may a **request for a grant be made in the Legislative Assembly**.
- **responsible for preparing and presenting the annual budget to the State Legislature**, which includes the expected revenue and expenditures for the year as well as **supplementary budgets** for the State.
- In the **event of an unplanned expenditure**, the **Governor can make advances from the State's Contingency Fund**, pending approval by the Legislature.
- Every five years, **he appoints a Finance Commission** to assess the financial situation of the **Panchayats and municipalities**.



Judicial Powers



- **Pardoning Power (Art.161):** can award **pardons, reprieves, respites, and remissions of penalty, as well as suspend, remit, and commute** the sentences of anybody guilty of laws pertaining to the state.

Difference between President's Pardoning Power

President	Governor
Can commute death sentences	Cannot commute
Can pardon penalties imposed by court martial	Cannot pardon such penalties
Pardoning power for anybody guilty under central laws	Guilty under state laws

- **Judicial Appointments:** The President consults the Governor to **appoint the justices of the State HC.**
 - makes **district judge** nominations, postings, and promotions **with the help of the State HCs.**
 - selects people to the **state's judicial service**, other than district judges, after **consulting with the State HC and the State Public Service Commission.**

Ordinance Making Power of Governor

- **Article 213:** can issue an Ordinance **when one or both Houses of the State Legislature are not in session.** It has the force of a law.
- can **promulgate Ordinance** when he is satisfied that circumstances exist where **immediate action is required.**
 - **prohibited from promulgating Ordinances** that contain provisions, which **require the previous sanction of the President for introduction** in the State Legislature or which are to be **reserved for the assent of the President.**
 - In such conditions **can promulgate** an Ordinance **after obtaining permission from the President.**
- An Ordinance issued by the Governor **ceases to be in operation six weeks after the re-assembly of the Legislature** unless approved earlier.
 - **may withdraw an Ordinance** any time before it expires.



Difference between Ordinance Making Powers of the President and Governor:

President	Governor
can issue ordinances only on those subjects on which the Parliament can make laws.	can issue ordinances only on those subjects on which the state legislature can make laws.
same force and effect as an act of the Parliament.	same force and effect as an act of the state legislature.
invalid beyond the legislative limits of Parliament	Invalid beyond legislative limits of state legislature
can promulgate or withdraw an ordinance only on the advice of the CoM headed by the PM.	can promulgate or withdraw an ordinance only on the advice of the state CoM headed by the CM of the state
should be laid before both the Houses of Parliament when it reassembles.	should be laid before the legislative assembly or both the Houses of the state legislature (in case of a bicameral legislature) when it reassembles.

Emergency Powers

- **report to the President** whenever he believes that a situation has arisen in which the State's government cannot be carried out in accordance with the Constitution's provisions (**Article 356**), thereby **inviting the President to assume** all or part of **the State's government functions (President's Rule)**
 - becomes an "**agent of the Union Government in the State.**"
 - He takes **administration in his own hands** and, with the help of the civil service, administers the state.



Discretionary Powers of the Governor

- **lynchpin of constitutional democracy** in the States.
 - **If there is any doubt** as to whether a topic is one for which the Governor has discretionary authority, the **Governor's judgement is definitive.**
- # **Governor has following Constitutional discretionary powers:**
- **Reserve a bill** for consideration of the President
 - Recommend **President's Rule**
 - serves as the **administrator of a bordering Union Territory.**
 - Under **Schedule VI**, determines the **royalty paid to the Tribal District Council** accruing from licenses for **mineral exploration by Assam, Meghalaya, Tripura and Mizoram**
 - **Seeking information from the CM** with regard to the administrative and legislative matters of the state.
- # **Governor has following situational discretionary powers:**
- **Appointment of CM** when no party has a clear-cut majority in the state legislative assembly or when he dies suddenly and there is no obvious successor.
 - **Dismissal of the CoM** when it cannot prove the confidence of the state legislative assembly.
 - **Dissolution of the state legislative assembly** if the CoM has lost its majority.
- # **Governor has following discretionary powers as directed by the President:**
- **Maharashtra:** Establish **separate development boards** for Vidarbha and Marathwada and Rest of Maharashtra. (**Art. 371**)
 - **Gujarat:** Establish **separate development boards** for Saurashtra and Kutch. (**Art. 371**) Chief Minister
 - **Nagaland:** to maintain **law and order** in the wake of **internal disturbance** in the Naga Hills-Tuensang Area. (**Art. 371A**)
 - **Assam:** administration of the **tribal areas (Art.371B)**
 - **Manipur:** administration of the **Hill areas in the state. (Art. 371C)**
 - **Andhra Pradesh:** **regional development** of Andhra Pradesh (**Art.371D**)
 - **Sikkim:** For peace and for ensuring social and economic advancement of the different sections of the population. (**Art. 371F**)
 - **Arunachal Pradesh:** maintaining the **law and order** in the state. (**Art. 371H**).
 - **Karnataka:** development of **Hyderabad-Karnataka region. (Art.371J; added by 98th Constitutional Amendment Act, 2012)**



2 CHAPTER

Chief Minister



Constitutional Provisions

- Elected head of the State
- Important articles related to Chief Minister:



Article	Provision
163	aid and advise Governor as head of State CoM
164	Governor to appoint CM
167(a)	Communicate to the governor all decisions of the CoM related to the management of the state's affairs and legislative measures
167(b)	provide the governor with any facts or ideas for legislation relevant to the management of the state's affairs
167(c)	present to the CoM for consideration any item on which a minister has made a decision

Appointment of CM

- **Art. 164:** governor must appoint the CM from the majority party in the state legislative assembly.
- When **no one party has a clear majority** in the legislature, the governor may choose and appoint the CM at his discretion.
 - selects the leader of the **assembly's biggest party or coalition**, and instructs him to **seek a vote of confidence** in the House **within a month**.



Oath

- **Governor administers the oaths** of office and secrecy to the CM:
 - **Have genuine faith** and devotion to the Indian Constitution,
 - To **protect India's sovereignty** and territorial integrity
 - To do out his **responsibilities truthfully and conscientiously**, and
 - To **treat all persons with respect** and decency, in conformity with the Constitution and the law, without fear or favour, affection or malice.
- He will **not communicate or divulge** to any person(s) anything that is presented before him or becomes known to him as a state minister, save as may be needed for the proper fulfilment of his responsibilities as such minister.



Term

- **not fixed**, he serves at the **discretion of the governor**.
- **can't be removed** by the governor as long as he **enjoys majority** in the legislature (Ruled by SC in **SR Bommai v. Union of India case, 1994**)
- However, if the **assembly loses confidence** in him, **he must resign** or face dismissal by the governor.



Salary and allowances

- **State legislature determines** the CM's salary and allowances.
- He receives a **sumptuary allowance, free housing, travel allowance, medical facilities, and other benefits in addition to his salary** and allowances as a member of the state legislature.



Powers of Chief minister

In relation to State Council of Ministers

As chairman of the state council of ministers

- Proposes governor to whom to select as **minister**
- **distributes and reshuffles ministerial portfolios.**
- In case of a disagreement, **can ask the minister to quit or urge the governor to fire him.**
- He **presides over the CoM' meetings** and has a say in its decisions.
- He **directs, oversees, and organises all of the ministers' operations.**
- the **CoM is automatically dissolved** if he resigns or dies.
 - Any other minister's resignation or death, on the other hand, simply creates a vacancy, which the CM may or may not fill.



In relation to Governor

- **communicate** to the Governor of the state all **decisions of the CoM** relating to the administration of the state's affairs and proposals for legislation;
- **advises the governor on the nomination of significant authorities** such as the advocate general, chairman, and state public service members.



In relation to State Legislature

As the head of the house:

- **advises the governor on the summoning and proroguing** of the state legislature's sessions.
- **recommend** to the governor the **dissolution of the legislative assembly** at any moment.
- On the floor of the House, **he announces the government's policies.**



Functions

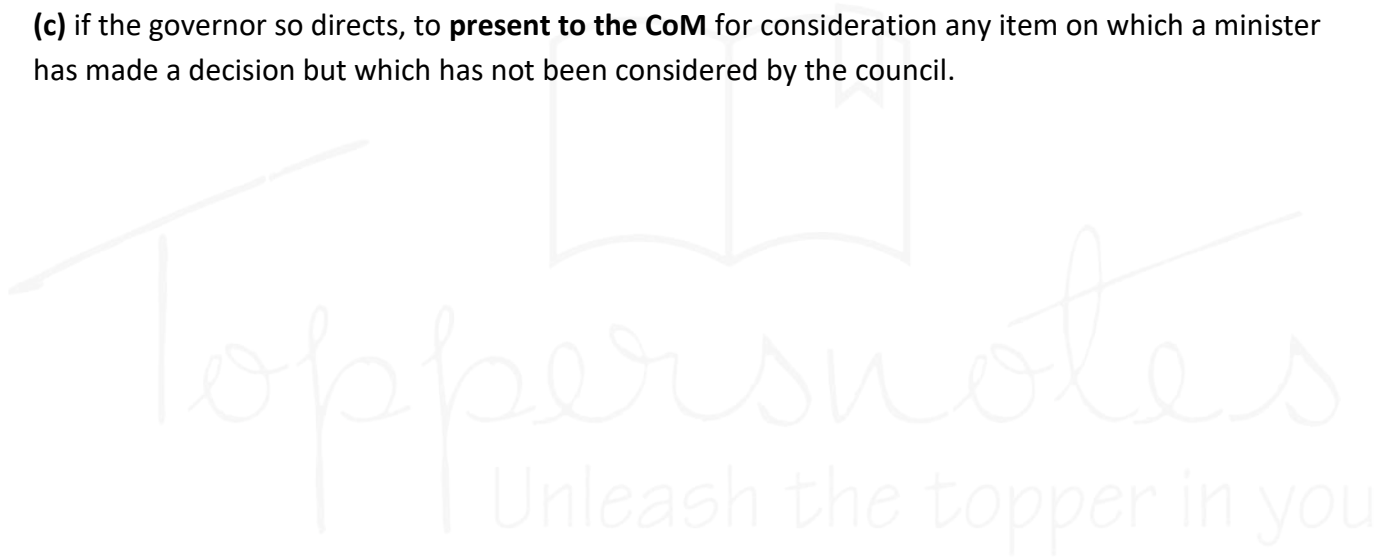
- **State Planning Board's chairman.**
- By rotation, **serves as vice-chairman of the concerned zonal council**, holding office for one year at a time.
- member of the PM's **Inter-State Council and the Governing Council of NITI Aayog.**
- state government's **main spokesman.**
- In times of crisis, **serves as the principal crisis manager** at the political level.
- **interacts with diverse groups of people** and gets memoranda from them on their issues, among other things.
- **services' political leader.**





Relationship with Governor

- **Article 163:** a CoM, with the CM as its chairman, to assist and advise the governor in the discharge of his duties, save when he is compelled to exercise all or part of his duties in his discretion.
- **Article 164:** (a) Governor shall appoint the CM, and other ministers appointed by the Governor on the CM's advice;
(b) ministers shall serve at the governor's pleasure;
(c) CoM shall be collectively responsible to the state's legislative assembly.
- **Article 167:** It is the CM's responsibility to:
(a) convey to the governor of the state all decisions of the CoM related to the management of the state's affairs and legislative measures;
(b) provide the governor with any facts or ideas for legislation relevant to the management of the state's affairs;
(c) if the governor so directs, to present to the CoM for consideration any item on which a minister has made a decision but which has not been considered by the council.



3 CHAPTER

State Council of Ministers



Constitutional Provisions

- **Articles:** 163,164, 166, 167 and 177 of the Constitution of india
- **Part:** VI of the constitution of india
- **Rights of Ministers as respects the Houses**



Article	Provisions
163	CoM to aid and advise the Governor.
164	Other provisions as to Ministers
167	Duties of the CM as respects the furnishing of information to the Governor, etc.
177	Rights of Ministers and Advocate-General as respects the Houses.

Composition of ministers

- **Constitutional Status:** not specify the size of the state CoM or the ranking of ministers.
- **determined by CM** as per the needs of the moment and the circumstances.
- **made up of three types of ministers:**
 - **Cabinet Ministers:** In-charge of key state government departments such as home, education, finance, agriculture, and so on.
 - attend **cabinet meetings** and have a **key role in policymaking** spanning the whole state government.
 - **Ministers of State:** Can be assigned to departments independently or be connected to cabinet ministers.
 - **not members of the cabinet** and do not attend cabinet sessions unless they are specifically invited when issues relating to their departments are discussed.
 - **Deputy Ministers:** **not in command** of departments on their own; work closely with cabinet ministers, assisting them with administrative, political, and parliamentary responsibilities.
 - **not cabinet members** and do not participate in cabinet sessions.



Appointment

- **Art. 164:** Appointed by **Governor** on advice of the CM of the state



91st Constitutional Amendment Act, 2003

- **Number of ministers in a state's CoM**, including the CM, **should not >15%** of the entire strength of that state's legislative assembly.
- must not be <12.
- A member of either House who is **disqualified for defection becomes ineligible to be appointed as a minister.**

- Serve at the **pleasure of the Governor**
- **ceases to be a minister** if he or she is not a member of the state legislature for **six months** in a row.
- **Ministers are usually appointed Among members of the Legislature**, either the Legislative Assembly or the Legislative Council.
 - A **minister can be appointed even if he or she is not a member of either House of Legislature**.
 - However, he **must become a member of either House of Legislature** (either by election or nomination) **within six months**, or he will lose his position as a minister.
- A **minister who is a member of one House of Legislature** has the **right to speak and participate in the proceedings of the other House as well**, but he can only vote in that House.

Oath

- **Art. 164: Administered by: The governor** (The oaths of office and secrecy)
 - To bear true faith and allegiance to the Constitution of India,
 - To uphold the sovereignty and integrity of India,
 - To faithfully and conscientiously discharge the duties of his office,
 - To do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill-will
- will not communicate or divulge to any person(s) anything that is brought to his attention or becomes known to him as a state minister, save as may be needed for the proper fulfilment of his responsibilities as such minister.



Salary

Art. 164: Determined by: State Legislature on regular basis

- A minister is paid the **same salary** and benefits **as a member of the state legislature**.
- He also **receives a stipend** (based on his position), **free housing, a travel allowance, and medical care, among other benefits**.



Responsibility of Ministers

Collective Responsibility

- **Article 164: collectively responsible** to the Legislative assembly of the state i.e. **all ministers share accountability** for all their actions of omission and commission in front of the state Assembly.
- When the Assembly approves a **no-confidence resolution against the CoM**, all ministers, including those from the Legislative council, must resign.
- The CoM **can recommend to the Governor that the Assembly be dissolved** and new elections held because **the House does not authentically represent the opinions of the public**. The **Governor may refuse to comply** with a CoM that has lost the State Assembly's confidence.



Individual Responsibility

- **Article 164: ministers serve at the discretion of the Governor**, which means that the **Governor can dismiss a minister even if the state COM has the confidence of the Assembly**.
- solely on the CM's suggestion.



Legal Responsibility

- **no provision** for legal accountability.
- **Order of the Governor** for a public act does **not need to be countersigned by a minister**.
- **courts are prohibited from investigating** the nature of the ministers' recommendations to the Governor.



Aid and Advice to Governor

Article 163: CoM to aid and advise the Governor.

- in the **performance of his powers**, except when he is obliged to exercise his functions in his discretion.
- Advice so given is **not subject to scrutiny in any court**.



Rights of Ministers

Article 177:

- **Right to speak and participate** in the proceedings of the Assembly and any State Legislature Committee to which he may be nominated.
- **not able to vote**.



Cabinet

- The **core of the CoM** is a smaller group known as the cabinet.
- It is made up **entirely of cabinet ministers**.
- In the state government, it is the **true seat of power**.
It has the following functions:
- In a state's political administrative structure, it is the **highest decision-making power**.
- It is the state **government's primary policy-making body**.
- It is the **state government's highest executive power**.
- It is the **state's primary administrative coordinator**.
- It **serves as a governor's advisory committee**.
- As the principal crisis manager, **it is responsible for all emergency situations**.
- It is **responsible for all key legislative and financial issues**.
- It has **authority over higher-ranking officials**, such as constitutional authorities and senior secretariat administrators.



Cabinet Committees

- The **cabinet is organised into a number of committees known as cabinet committees**.
- Two Types:
 - **Standing:** Permanent in character
 - **Ad hoc:** Temporary in character
- They are **established by the CM** in response to the needs of the period and the situation. As a result, **their number, nomenclature, and composition change with time**.
- They not only resolve difficulties and provide ideas for the cabinet's consideration, but they also make decisions. The cabinet, on the other hand, has the ability to revisit its judgments.

