

Indian Polity – Part 10

10] State Government

Notes

Governor of the State

The Constitution of India mentions that, there has to be a Governor for each State. If requirement arises, one person can be appointed Governor for even two or more States. Since the executive authority of every State is vested in the Governor of the State, he is a very important part of the State executive.

Appointment :

The Governor of a State is appointed by the President of India. It must be noted that there is no bar on re - appointment of a Governor, either in the same State or in other State.

Qualifications:

For becoming a Governor, an individual must have following qualifications:

1. He must be a citizen of India;
2. He should be at least 35 years;
3. He cannot hold any office of profit during the tenure.

But, if a person is a member of either of the House of the Parliament or the Legislature of any State is appointed as a Governor, he will cease to be a member of the Legislature or the Council of Ministers.

Tenure:

The Governor is appointed for a term of five years. However, he normally holds office during the pleasure of the President. He/she can resign before the expiry of the term or may be removed by the President earlier than completion of his term. It must be noted that, while appointing or removing the Governor, the President has to follow the advise of the Prime Minister .

Emoluments:

He/she is entitled to a rent-free residence which is usually called the Raj Bhawan. His/her emoluments, allowances and privileges are specified under the law. But, the emoluments and allowances of the Governor cannot be changed during his tenure.

Powers, Position and Role:

The powers and functions of the Governor are categorised under two heads namely,

1. As the head of the State – Executive, legislative, financial as well as pardon powers.
2. As the representative of the Union Government.

(A) Executive Powers:

- All the executive functions in the State are carried on in the name of the Governor.
- He/she appoints the Chief Minister and on his/her advice appoints the members of the Council of Ministers of the State.
- He/she allocates portfolios among the ministers on the advice of the Chief Minister.
- He/she appoints the Advocate- General , and also the Chairman and members of the State Public Service Commission on advice of the Chief Minister.
- He/she has the power to appoint judges of the courts, other than the High Court. According to procedures established under the law.
- He/she is consulted by the President when the judges of the State High Court are appointed.
- While discharging all his/her functions as the Head of the Executive in the State, the Governor like the President, is advised by the Council of Ministers headed by the Chief Minister.

(B) Legislative Powers:

The legislative powers, like the executive powers are exercised by the State Council of Ministers, headed by the Chief Minister.

- The Governor summons and prorogues the State Legislature.
- He/she can dissolve the State Legislative Assembly on the recommendation of the Council of Ministers headed by the Chief Ministers .
- He/She may address the session of the State Legislative Assembly.
- He can send messages to either or both Houses.
- He/She may nominate one member of the Anglo Indian Community to the State Legislative Assembly, if he/she is satisfied that, the said community is not adequately represented.
- He/she nominates one-sixth members of the total strength of the Legislative Council if the Council exists in a State. Such nominated members are individuals possessing special knowledge in the field of literature, science, cooperative movement, social service as well.
- The assent of the Governor is necessary for a bill to become a law. In this regard, the Governor has the following options when he receives a bill for his consideration:

- ✓ He/she may give his assent to the bill, in which case the bill becomes a law;
 - ✓ He/she can withheld the assent, in which case the bill fails to become a law;
 - ✓ He/she can return the bill with his message to the State Legislature, if it passes the bill in its original shape again or in a modified form, the Governor has to give the assent to the bill;
 - ✓ He/she can reserve the bill for the consideration of the President.
- The Governor also has the power to issue ordinances when the State Legislature is not in session. But, the ordinance has to be placed before the State Legislature when it assembles again for the next session. Such ordinance ceases to be effective after six weeks. The Legislative Assembly is empowered to replace the ordinance by a law within the said period to continue it.

(C)Financial Powers:

- Money bill cannot be introduced in the State Legislative Assembly without the prior permission of the Governor.

- The annual and supplementary budgets are introduced in the Assembly in the name of the Governor.
- The Governor has the control over the State Contingency Fund, without his assent the fund cannot be drawn upon.

(D) Power of Pardon:

The Governor possesses the power to grant pardon, reprieve, respites or remission of punishment or to suspend, remit or commute the sentence of any person convicted by the Courts of any offence against any law relating to matters of the State.

(E) Discretionary Powers:

The executive, legislative, financial and judicial powers the Governor are exercised on aid and advice of the Council of Ministers, headed by the Chief Minister.

However, there are a few more powers which the Governor possesses as the representative of the Central or Union Government. These powers are known as discretionary powers.

Under special circumstance that the Governor can act without the advice of the Council of Ministers. This means, these powers of the Governor are exercised in his/her own discretion. They are mentioned below:

1. When in the opinion of the Governor there is breakdown of the constitutional machinery in the State. In that case, the Governor can report the situation to the President for imposition of the President's Rule in that State. In case the Governor's report is accepted by the President, and he/she proclaims emergency under Article 356, the State Council of Ministers stands removed, and the State Legislative Assembly is either dissolved or suspended. During such emergency, the Governor rules on behalf of the President as his agent.
2. When the Governor may reserve a bill for the consideration of the President. Since the Governor exercises these powers on his own, they are called the discretionary power of the Governor. The discretionary powers of the Governor were introduced in the Constitution for extraordinary and emergency situations. But, in practice, these powers have also been abused in certain situations. This has led to tension between Union and State relations.

Governor of States (Article 152-162)

PART VI of the Constitution deals with the other half of Indian federalism, ie the States. Article from 152-237 deals with various provisions related to States. It covers the executive, legislature and judiciary wings of the states. Article 152 clarifies about the definition of state, while the next set of articles lists the roles and responsibilities of the Governors of states.

Article 152 : Definition

The Governor

Article 153: Governors of States

There shall be a Governor for each State:

Provided that nothing in this article shall prevent the appointment of the same person as Governor for two or more States.

Article 154: Executive power of State

(1) 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.

(2) Nothing in this article shall—

(a) Be deemed to transfer to the Governor any functions conferred by any existing law on any other authority; or

(b) Prevent Parliament or the Legislature of the State from conferring by law functions on any authority subordinate to the Governor.

Article 155: Appointment of Governor

The Governor of a State shall be appointed by the President by warrant under his hand and seal.

Article 156: Term of office of Governor

(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) Subject to the foregoing provisions of this article, a Governor shall hold office for a term of five years from the date on which he enters upon his office:

Provided that a Governor shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

Article 157: Qualifications for appointment as Governor

No person shall be eligible for appointment as Governor unless he is a citizen of India and has completed the age of thirty-five years.

Article 158: Conditions of Governor's office

(1) The Governor shall not be a member of either House of Parliament or of a House of the Legislature of any State specified in the First Schedule, and if a member of either House of Parliament or of a House of the Legislature of any such State be appointed Governor, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as Governor.

(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 and, until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.

(3A) Where the same person is appointed as Governor of two or more States, the emoluments and allowances payable to the Governor shall be allocated among the States in such proportion as the President may by order determine.

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

Article 159: Oath or affirmation by the Governor

Every Governor and every person discharging the functions of the Governor shall, before entering upon his office, make and subscribe in the presence of the Chief Justice of the High Court exercising jurisdiction in relation to the State, or, in his absence, the senior most Judge of that Court available, an oath or affirmation in the following form, that is to say—“I, A. B., do swear in the name of God that I will solemnly affirm faithfully execute the office of Governor (or discharge the functions of the Governor) of(name of the State) and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well-being of the people of(name of the State) .”

Article 160: Discharge of the functions of the Governor in certain contingencies

The President may make such provision as he thinks fit for the discharge of the functions of the Governor of a State in any contingency not provided for in this Chapter.

Article 161: Power of Governor to grant pardons, etc., and to suspend, remit or commute sentences in certain cases

The Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or 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.

Article 162: Extent of executive power of State

Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws:

Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof.

Council of Ministers in States (Articles 163-164)

Article 163: Council of Ministers to aid and advise Governor

(1) There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.

(2) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion 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 question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any court.

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, and the Ministers shall hold office during the pleasure of the Governor:

Provided that in the States of Bihar, Madhya Pradesh and Orissa, 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.

(1A) The total number of Ministers, including the Chief Minister, in the Council of Ministers in a State shall not exceed fifteen per cent. of the total number of members of the Legislative Assembly of that State:

Provided that the number of Ministers, including the Chief Minister in a State shall not be less than twelve:

Provided further that where the total number of Ministers including the Chief Minister in the Council of Ministers in any State at the commencement of the Constitution (Ninety-first Amendment) Act, 2003 exceeds the said fifteen per cent. or the number specified in the first proviso, as the case may be, then the total number of Ministers in that State shall be brought in conformity with the provisions of this clause within six months from such date* (7.1.2004: vide Notification No. S.O. 21(E), dated 7.1.2004.) as the President may by public notification appoint.

(1B) A member of the Legislative Assembly of a State or either House of the Legislature of a State having Legislative Council belonging to any political party who is disqualified for being a member of that House under paragraph 2 of the Tenth Schedule shall also be disqualified to be appointed

as a Minister under clause (1) for duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or where he contests any election to the Legislative Assembly of a State or either House of the Legislature of a State having Legislative Council, as the case may be, before the expiry of such period, till the date on which he is declared elected, whichever is earlier.

(2) The Council of Ministers shall be collectively responsible to the Legislative Assembly of the State.

(3) Before a Minister enters upon his office, the Governor shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule.

(4) A Minister who for any period of six consecutive months is not a member of the Legislature of the State shall at the expiration of that period cease to be a Minister.

(5) The salaries and allowances of Ministers shall be such as the Legislature of the State may from time to time by law determine and, until the Legislature of the State so determines, shall be as specified in the Second Schedule.

The Chief Minister: Appointment, Power, Function and Position

The Chief Minister is appointed by the governor. Art. 164 of the Constitution provides that there shall be a Council of Ministers with the Chief Minister at its head to aid and advise the governor.

Once the election to the Legislative Assembly is over the task of forming the government begins. The party with the majority in the Legislative Assembly (Vidhan Sabha) is entitled to form the government. It is upon his recommendation that ministers are appointed. However, some of the important powers and functions of the Chief Minister are as under:

Powers and Functions of the Chief Minister:

The Chief Minister holds a pivotal position in the working of the State Government. He has enormous powers and vast responsibilities.

1. To Aid and Advise the Governor:

The Chief Minister is the link between the Cabinet and the Governor. It is he who communicates to the Governor all decisions of the Council of Ministers. He has to furnish such information relating to the administration of the State as the Governor may call for.

The Governor can submit to the consideration of the Council of Ministers any matter on which decision has been taken by a Minister but which has not been considered by the Council of Ministers.

The Governor appoints a large number of top officials of the State. He also summons and prorogues the sessions of State Legislature. All such powers are exercised by the Governor on the advice of the Chief Minister. The Chief Minister, however, has no right to give advice to the Governor in relation to the functions which he exercises in his discretion.

2. The Chief Minister is at the Head of the Council of Ministers:

As Head of the State Cabinet, the Chief Minister enjoys the following powers:

(i) Formation of the Ministry:

The other Ministers are appointed by the Governor on the advice of the Chief Minister. The Chief Minister has a free hand in preparing the list of his colleagues. The Governor may suggest the names of the persons to be included in the Ministry, but he cannot insist upon any person to be included in the Ministry. Assigning departments or portfolios to the Ministers is done by the Governor on the advice of the Chief Minister.

(ii) Removal of Ministers:

The Ministers hold office during the pleasure of the Governor. This, however, does not mean that the Governor can dismiss his Ministers at his will. The Government is in fact dependent on the Chief Minister. Therefore, the Chief Minister can reconstruct his Ministry as and when he likes. He may ask anyone of his colleagues to resign. If he declines, he will be dismissed by the Governor.

(iii) The Chief Minister Presides over the Meetings:

As Chairman of the Cabinet, the Chief Minister has a position which enables him to impose his decision. It 'is he who controls the agenda for the Cabinet meetings. It is for the Chief Minister to accept or reject proposals for Cabinet discussion.

The logo for Winmeen, featuring the word 'winmeen' in a bold, lowercase, sans-serif font. The letters are white and are set against a dark grey rectangular background. The logo is positioned centrally below the text of the third point.**(iv) Co-ordinates the Working of various Departments:**

The Chief Minister supervises and coordinates policies of the several Ministers and Departments. Several ministries are involved in the formulation and implementation of a policy.

The Chief Minister must bring these activities into reasonable relationship with one-another. In matters of public order, roads and bridges agriculture,

land revenue and production, supply and distribution of goods, he plays a special role in directing the policy of the Government.

3. The Chief Minister is the Leader of the House:

The Chief Minister is the leader of the State Legislative Assembly. All principal announcements of policy are made by him. The Chief Minister intervenes in debates of general importance. He can appease an angry House by promising immediate relief or concessions when needed.

Position of the Chief Minister:

The Chief Minister's position is pre-eminent in the State governmental system. In practice, his position will be imposing only when his party commands a clear majority in the State Legislature.

When it is a coalition government, it becomes difficult to safeguard the principle of collective responsibility also. Much of the time and energy of the Chief Minister will, in that case, be wasted on keeping his team united and sufficiently disciplined.

Formation of the Council of Ministers

- The person who commands the majority support in the State Legislative Assembly (Vidhan Sabha) is appointed as the Chief Minister by the Governor.
- The Chief Minister advises the Governor to appoint other ministers of the Council of Ministers.
- A person who is not a member of the State legislature can also be appointed as a minister, but he/she ceases to hold ministerial office if he/she is not elected to the State legislature within six months of his/her appointment.
- The portfolios to the members of the Council are allocated by the Governor, on the advice of the Chief Minister.

Functions of the Chief Minister

The constitutional position of the Chief Minister is broadly similar to that of the Prime Minister of India. Chief Minister serves as the head of the Council of Ministers of the State. Hence, the Chief Minister plays an important role in the administration of the State. His functions are mentioned as follows:

1. Chief Minister acts as the real executive of the State Government.
Ministers are also appointed by the Governor on the advice of the

Chief Minister. The Governor even allocates portfolios to these ministers on the advice of the Chief Minister.

2. Chief Minister presides over the Cabinet meetings. He coordinates the functioning of different ministries in his/her state.
3. He/she guides the functioning of the Cabinet according to their vision.
4. Chief Minister plays an important role in framing the policies and laws of the State Government. Also the bills are introduced by the ministers in the State legislature with his/her prior approval.
5. He/she is the chief spokesperson of the policies of his/her government, both inside and outside of the State Legislature.
6. The Constitution provides that “the Chief Minister shall communicate all decisions of the Council of Ministers relating to the administration and the affairs of the State and proposals for legislation to the Governor.”
7. The Chief Minister has to furnish information related to the administration of the State and also about the proposals for legislation to the Governor.
8. “If the Governor requires, the Chief Minister has to submit for 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 Cabinet.”

9. The Chief Minister is the sole link of communication between the Cabinet and the Governor. The Governor has the right to be informed by the Chief Minister about the decisions taken by the Council of Ministers.

These above mentioned functions show that the real authority in the state administration is vested with the Council of Ministers headed by the Chief Minister. Therefore, the Council of Ministers is the real executive of the State. It must be noted that the position of the Council of Ministers largely depends upon the strength of the ruling party in the State Assembly and also on the personality of the Chief Minister.

Relationship of the Governor with the Chief Minister:

- Since the Governor is the constitutional head of the State, all executive actions in the State are taken in his name.
- The Governor appoints the Chief Minister and other ministers in the Council of ministers.
- The Governor is hence, responsible for smooth running of the State administration because its his/her duty to oversee that the State

administration is carried according to the provisions mentioned in the Constitution.

- If the Governor finds that the constitutional machinery of the State has broken down or the administration cannot be carried in accordance with the provisions of the Constitution, he/she can recommend proclamation of emergency in the State to the President.
- The Governor in his/her report can advise the President to impose President's Rule in the State. If the President agrees with the Governor, he/she is empowered to declare emergency under Article 356, popularly known as President's Rule in the State.
- After the proclamation, the State comes under the control of the Central Government and the Governor acts as the Centre's agent. The Council of Ministers stands dismissed and Assembly (Vidhan Sabha) is dissolved or suspended.
- When the Chief Minister enjoys the confidence of the State legislature, the Governor's capacity to exercise his/her discretionary powers gets limited to a large extent. In such situation, the Chief Minister acts as the real head of the State administration and the Governor acts as the constitutional head only.

Conclusion:

1. The Chief Minister acts as the real head of the Government at the State level.
2. The Governor appoints the Chief Minister based on the majority support in Legislature.
3. Other Ministers of the Council are appointed by the Governor by the aid and advice of the Chief Minister.
4. The Chief Minister is the presiding authority over the Cabinet meetings. Therefore, he/she is responsible for laying down the policies of the State Government.
5. He/she acts as the sole link between his Council of ministers and the Governor.
6. He/she coordinates the functioning of different ministries in the State government.
7. The Chief Minister communicates the concerns of the State to the Union government.

The State Legislature – in General (Article 168-177)

Article 168: Constitution of Legislatures in States.

(1) For every State there shall be a Legislature which shall consist of the Governor, and—

(a) In the States of Andhra Pradesh, Telengana, Uttar Pradesh, Bihar, Maharashtra, Karnataka and Jammu and Kashmir, two Houses;

(b) In other States, one House.

(2) Where there are two Houses of the Legislature of a State, one shall be known as the Legislative Council and the other as the Legislative Assembly, and where there is only one House, it shall be known as the Legislative Assembly.

Article 169: Abolition or creation of Legislative Councils in States.

(1) Notwithstanding anything in article 168, Parliament may by law provide for the abolition of the Legislative Council of a State having such a Council or for the creation of such a Council in a State having no such Council, if the Legislative Assembly of the State passes a resolution to that effect by a majority of the total membership of the Assembly and by a majority of not less than two-thirds of the members of the Assembly present and voting.

(2) Any law referred to in clause (1) shall contain such provisions for the amendment of this Constitution as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions as Parliament may deem necessary.

(3) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of article 368.

Article 170: Composition of the Legislative Assemblies.

(1) Subject to the provisions of article 333, 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.

(2) For the purposes of clause (1), each State shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the State.

(3) Upon the completion of each census, the total number of seats in the Legislative Assembly of each State and the division of each State into territorial constituencies shall be readjusted by such authority and in such manner as Parliament may by law determine:

(i) The total number of seats in the Legislative Assembly of each State as readjusted on the basis of the 1971 census; and

(ii) The division of such State into territorial constituencies as may be readjusted on the basis of the 2001 census, under this clause.

Article 171: Composition of the Legislative Councils.

(1) The total number of members in the Legislative Council of a State having such a Council shall not exceed one third of the total number of members in the Legislative Assembly of that State:

Provided that the total number of members in the Legislative Council of a State shall in no case be less than forty.

(2) Until Parliament by law otherwise provides, the composition of the Legislative Council of a State shall be as provided in clause (3).

(3) Of the total number of members of the Legislative Council of a State—

(a) As nearly as may be, one-third shall be elected by electorates consisting of members of municipalities, district boards and such other local authorities in the State as Parliament may by law specify;

(b) As nearly as may be, one-twelfth shall be elected by electorates consisting of persons residing in the State who have been for at least three years graduates of any university in the territory of India or have been for at least three years in possession of qualifications prescribed by or under any

law made by Parliament as equivalent to that of a graduate of any such university;

(c) As nearly as may be, one-twelfth shall be elected by electorates consisting of persons who have been for at least three years engaged in teaching in such educational institutions within the State, not lower in standard than that of a secondary school, as may be prescribed by or under any law made by Parliament;

(d) As nearly as may be, one-third shall be elected by the members of the Legislative Assembly of the State from amongst persons who are not members of the Assembly;

(e) The remainder shall be nominated by the Governor in accordance with the provisions of clause (5).

(4) The members to be elected under sub-clauses (a), (b) and (c) of clause (3) shall be chosen in such territorial constituencies as may be prescribed by or under any law made by Parliament, and the elections under the said sub-clauses and under sub-clause (d) of the said clause shall be held in accordance with the system of proportional representation by means of the single transferable vote.

(5) The members to be nominated by the Governor under sub-clause (e) of clause (3) shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely:—
Literature, science, art, co-operative movement and social service.

Article 172: Duration of State Legislatures.

(1) Every Legislative Assembly of every State, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the Assembly:

Provided that the said period may, while a Proclamation of Emergency is in operation, be extended by Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate.

(2) The Legislative Council of a State shall not be subject to dissolution, but as nearly as possible one-third of the members thereof shall retire as soon as may be on the expiration of every second year in accordance with the provisions made in that behalf by Parliament by law.

Article 173: Qualification for membership of the State Legislature.

A person shall not be qualified to be chosen to fill a seat in the Legislature of a State unless he—

- (a) Is a citizen of India, and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule;
- (b) Is, in the case of a seat in the Legislative Assembly, not less than twenty-five years of age and, in the case of a seat in the Legislative Council, not less than thirty years of age; and
- (c) Possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

Article 174: Sessions of the State Legislature, prorogation and dissolution.

(1) The Governor shall from time to time summon the House or each House of the Legislature of the State to meet at such time and place as he thinks fit, but six

Months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.

(2) The Governor may from time to time—

- (a) Prorogue the House or either House;

(b) Dissolve the Legislative Assembly.

Article 175: Right of Governor to address and send messages to the House or Houses.

(1) The Governor may address the Legislative Assembly or, in the case of a State having a Legislative Council, either House of the Legislature of the State, or both Houses assembled together, and may for that purpose require the attendance of members.

(2) The Governor may send messages to the House or Houses of the Legislature of the State, whether with respect to a Bill then pending in the Legislature or otherwise, and a House to which any message is so sent shall with all convenient despatch consider any matter required by the message to be taken into consideration.

Article 176: Special address by the Governor.

(1) At the commencement of the first session after each general election to the Legislative Assembly and at the commencement of the first session of each year, the Governor shall address the Legislative Assembly or, in the case of a State having a Legislative Council, both Houses assembled together and inform the Legislature of the causes of its summons.

(2) Provision shall be made by the rules regulating the procedure of the House or either House for the allotment of time for discussion of the matters referred to in such address.

Article 177: Rights of Ministers and Advocate-General as respects the Houses.

Every Minister and the Advocate-General for a State shall have the right to speak in, and otherwise to take part in the proceedings of, the Legislative Assembly of the State or, in the case of a State having a Legislative Council, both Houses, and to speak in, and otherwise to take part in the proceedings of, any committee of the Legislature of which he may be named a member, but shall not, by virtue of this article, be entitled to vote.

About Article 370

Article 370 is an article of the Constitution of India, Part XXI: Temporary, Transitional and Special Provisions. Moreover, it grants a special status of autonomy to the state of Jammu & Kashmir.

Article 370's Inclusion in the Constitution

- Originally, all princely states, including Jammu & Kashmir, merged with India on three matters: defense, foreign affairs and communications.

- Princely states had to draft their own constitutions which would govern other aspects of society.
- However, most states rejected the necessity of a separate constitution and adopted the Indian Constitution.
- Hence, this made those princely states equivalent to other Indian provinces.
- However, Jammu & Kashmir made its own constitution and asked for Indian Constitution to apply only on the three matters of original merger.
- Thus, Article 370 was included in the Indian Constitution according to which other articles of Indian Constitution will apply to Jammu & Kashmir with the agreement of State's constituent assembly.
- Moreover, this Article was only temporary.

Article 370's Permanence

- Article 370 was meant to be a temporary provision applied to the state of Jammu & Kashmir.
- The Constituent Assembly of Jammu & Kashmir had the authority to repeal or modify the state constitution. Hence, no external body could make any changes to the clauses.

- The Jammu & Kashmir Constituent Assembly dissolved on 25 January 1957 without any decision.
- Article 370 has become a permanent provision in Indian Constitution according to Jammu & Kashmir High Court.
- Therefore, Jammu & Kashmir has a special autonomous status in the country.

Original Implications of Article 370

Article 370 included six special provisions for the state of Jammu & Kashmir at the time of Preparation:

1. Exempting the State from completely applying the Indian Constitution. The state could have its own Constitution.
2. Limitation of central legislative powers over the State at the time of framing, to matters of defense, foreign affairs and communications.
3. Extension of other constitutional provisions of Central Government to State only with State Government's agreement.
4. The 'concurrence' (agreement) was only provisional. It required State's Constituent Assembly's consent.
5. State Government's authority to give 'concurrence' lasted only until the State Constituent Assembly was assembled. After the Assembly

finalized the scheme of powers and dispersed, no further changes were possible.

6. Thus, Article 370 could be repealed or amended only upon the recommendation of the State's Constituent Assembly.

Major Presidential Orders Regarding Article 370

- Presidential Order – 1950: Specifies which articles of Indian Constitution applies to the state through the original agreement.
- Presidential Order – 1952: Represents abolition of monarchy in Jammu & Kashmir.
- Presidential Order – 1954: Includes
- Allowing Indian citizenship to permanent residents of Jammu & Kashmir
- Extending Supreme Court of India's jurisdiction over the state.

Current Implications of Article 370

- Residual Power remains with the state of Jammu & Kashmir.
- Central government has applied various provisions with the consent of State government.
- However, this State Government cannot repeal Article 370's implications.

High Court Of India

The High Court of a State is the highest court of the State and all other courts of the State work under it. Normally there is one High Court in every State but there can be only one High Court for two or more States as well, according to the constitution. There is one High Court at Chandigarh for Punjab, Haryana and Union Territory of Chandigarh. Similarly there is one High Court at Guwahati which serves Assam, Meghalaya, Manipur, Tripura and Nagaland.

Composition:

In every High Court, there is a Chief Justice and many other judges whose number is defined by the President of India.

Appointment of the Judges: The Chief Justice of a High Court is appointed by the President with the consultation of the Chief Justice of the Supreme Court and the Governor of the State. The other judges are appointed by the will of President, Governor and the Chief Justice of High Court.

Qualifications for the Judges

(a) He should be a citizen of India.

(b) He should have been an advocate in one or more High Courts in India or a judge for at least 10 years in subordinate courts in India.

Tenure: Originally the age of the retirement of the judges of the High Courts was fixed at 60 but it was raised to 62 in 1963 according to the 15th amendment of the Constitution.

Removal of the Judges: A judge may leave his office by resigning. He will send his letter of resignation to the President. His office would be considered to have been vacated if he is appointed as a judge of the Supreme Court or is transferred to some other High Court. A judge of a High Court may also be removed like a judge of the Supreme Court. A judge of High Court may be removed by the President if the Parliament passes a motion against him by an absolute majority and 2/3rd majority of the members present and voting, both the Houses sitting separately.

Salary:

The pay of the Chief Justice of a High Court is rupees 90,000/- per month and that of the other judges is rupees 85,000/- per month.

Powers and Functions

Original Jurisdiction:

The original jurisdiction of the High Court is restricted.

(a) Every High Court under Article 226 is empowered to issue writs, orders, directions including writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo-warranto and Certiorari or any of them to any person or authority within its territory for the enforcement of the Fundamental Rights and for any other purpose.

(b) The original jurisdiction of High Court extends to matters of admiralty, matrimonial, contempt of court and cases ordered to be transferred to High Court by lower court.

(c) The High Courts of Mumbai, Kolkata and Chennai have original jurisdiction on hearing straightway cases involving the Christians and Parsies.

(d) The High Courts of Mumbai, Kolkata and Chennai exercise original civil jurisdiction when the amount involved is more than two thousand rupees.

Appellate Jurisdiction:

The appellate jurisdiction of the High Courts extends so:

- (a) The High Court can hear appeals in civil cases if the amount involved in the case is at least Rs. 5000.
- (b) The High Court in criminal cases hears the appeal in which the accused has been sentenced to four years imprisonment by the Sessions Judge. v
- (c) The death sentence awarded by Sessions Judge is subject to approval by the High Court.
- (d) The High Court hear the cases involving interpretation of the Constitution or Law.
- (e) The High Court hears the cases on income tax, sales tax etc.

Power of Judicial Review:

The States High Courts like the Supreme Court has the power of Judicial Review. A High Court has the power to strike down any law of the State or any order of the executive if it violates any provision of the constitution or curtails or takes any of the Fundamental Rights of the people.

Administrative and Supervisory Power:

The State High Court performs many administrative functions within its Territorial Jurisdiction. It exercises the power of superintendence and

control over all courts and tribunals throughout the territory except the military tribunals.

