

Indian Polity Notes Part 10 in English

10] The Central Government

The State Government

- India is a union of **28 States and 8 Union Territories**. Among the 8 union territories, "DELHI" is the "National Capital Territory".
- The States are administered by the State Governments. The Union Territories are administered by the President through Lieutenant Governors or Chief Administrators.
- Delhi attained the status of National Capital Territory by the **69th amendment of the Constitution in 1991**.
- The powers and functions of the State Governments are clearly defined in the Constitution.
- They are responsible for the administration of the subjects in the "State List" of the Constitution.
- Like the Government at the centre, the State Government also has its own legislative and Executive wings.
- **Articles 152 to 237** of our constitution clearly mention about the administration of the states.
- Articles 153 to 160 deal with the appointment, qualification, powers and functions of the Governor.

The Executive

- The State Executive in each State consists of the Governor, the Chief Minister and the Council of Ministers.

The Governor

- The entire executive authority is vested in the Governor. He is the nominal and Constitutional head of the State Government.
- The Council of Ministers with the **Chief Minister as the head, is the real executive**.
- The Council of Ministers is collectively responsible to the State Legislative Assembly.

The Appointment of the Governor

- The Governor is appointed by the President by warrant under his hand and seal.
- He / She can be transferred from one State to another by the President. The Governor has to take an oath of office before the Chief Justice of the High Court.
- He is appointed by the president by warrant under his hand and seal.
- In a way, he is a nominee of the Central government. But, as held by the Supreme Court in 1979, the office of governor of a state is not an employment under the Central government.

Qualification

- He / She must be a citizen of India.
- He / She should have completed 35 years of age.
- He / She should not be a member of Parliament or of any state legislature. If so He / She has to vacate the post.
- He / She should not hold any office of profit under state or central government.
- He / She should not belong to the same state where He/ She is appointed as the Governor.

The term of office

- The term of office of the Governor is normally “five years”.
- But he / she holds office during the pleasure of the President. The president can remove the Governor before the expiry of his term or can extend his term for another five years.
- The governor can resign from his post but no impeachment proceedings against him are contemplated in the constitution.

Powers and functions of the Governor

- According to **article 164** of the Constitution, the Governor appoints the Chief Minister and also other Ministers on the advice of the Chief Minister.
- He also appoints the Advocate General, Chairperson and members of State Public Service Commission, Vice-Chancellors of the universities in the state etc.
- The Governor has to send periodical reports to the President regarding the functioning of the State Government. He directly rules the state when there is imposition of President’s rule.
- The Governor is the part of the State Legislature.
- He / She nominates 1/6 of the members to the Legislative Council wherever it exists. The Anglo Indian representative in the state Assembly is also nominated by the governor.
- All bills passed by the State Legislature become “laws” only with his/ her assent. He/ She can pass “Ordinances” when the Legislature is not in session.
- If there is failure of constitutional machines in any state, the President issues a “Proclamation” under **Art. 356** of the Constitution by which the State Assembly will be dissolved. The Governor under such circumstances gets real administrative powers. This is called as “President Rule”.
- The permission of the Governor is necessary for introducing money bills in the States Legislature.
- “**Demand for Grants**” can be made only on the recommendation of the Governor.
- The “State Budget” is presented in the Legislative Assembly only with his / her permission.
- The Constitution empowers the Governor to spend money from the “Contingency fund of the State” to meet unforeseen expenditure.

- Governor shall have power to pardon, commute or suspend the sentence of any criminal convicted under the jurisdiction for the state (high court) on advice from the state's cabinet / chief minister.
- However, he/ she have no powers to increase the punishments.
- The Governor receives annual report of the State public Service Commission and submits the same to the Legislature for the consideration and approval.

Articles:

- 153. Governors of states
- 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 or affirmation by the Governor
- 160. Discharge of the functions of the Governor in certain contingencies
- 161. Power of the Governor to grant pardons and others
- 162. Extent of executive power of state
- 163. Council of ministers to aid and advise the Governor
- 164. Other provisions as to ministers like appointments, term, salaries, and others
- 165. Advocate-General for the state
- 166. Conduct of business of the government of a state
- 167. Duties of the Chief Minister regarding furnishing of information to the Governor, and so on
- 174. Sessions of the state legislature, prorogation and dissolution
- 175. Right of the Governor to address and send messages to the house or houses of state legislature
- 176. Special address by the Governor
- 200. Assent to bills (i.e. assent of the Governor to the bills passed by the state legislature)
- 201. Bills reserved by the Governor for consideration of the President
- 213. Power of Governor to promulgate ordinances
- 217. Governor being consulted by the President in the matter of the appointments of the judges of the High Courts
- 233. Appointment of district judges by the Governor
- 234. Appointments of persons (other than district judges) to the judicial service of the state by the Governor.

The Chief Minister and the Council of Ministers.**Chief Minister**

- The real executive powers of State Governments are vested in the Council of Ministers.
- In the State, the Chief Minister runs the administration in the name of the Governor.
- His Position in the state is similar to that of the Prime Minister in centre.

The appointment of the Chief Minister

- The Chief Minister is appointed by the Governor of the State. The leader of the majority party or majority group in the State Legislative Assembly is appointed as the Chief Minister.
- In case no party commands absolute majority in the Legislative Assembly or the majority fails to elect its leader, the Governor can use his power and invite the leader of the other largest party to form the ministry.
- He has to prove the confidence (majority support) in the Legislative Assembly within the period stipulated by the Governor.
- The term of the Chief Minister is not fixed. He may remain as the Chief Minister as long as he/ she enjoys the support of the majority of the members of the Legislative Assembly.
- He has to resign when he loses confidence of the majority in the assembly.
- It is understood that normally he completes 5 years term like other members in the Legislative Assembly.

Powers and functions of the Chief Minister

- The Chief Minister is the real executive head of the State administration. He has the following powers and functions.

The primary functions of the Chief Minister are

- To form the ministry, (Council of Ministers) by preparing a list of ministers.
- Distribute the portfolios (departments) to colleagues and get them allocated by Governor.
- Ask a minister to resign if he fails in his duties.
- He has the right to change the department of ministers at his will and get it notified by Governor.
- The Chief Minister is the head of the cabinet. He / She convenes and presides over its meetings.
- He / She is link between Governor and Council of Ministers.
- He / She advise the Governor for the early dissolution of the State Assembly.

Relationship With the Governor

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

- **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

(c) The council of ministers shall be collectively responsible to the legislative assembly of the state.

- **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

(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

Article:

- 163. Council of Ministers to aid and advise Governor
- 164. Other provisions as to Ministers
- 166. Conduct of business of the Government of a State
- 167. Duties of Chief Minister as respects the furnishing of information to Governor, etc.

Council of Ministers

- Like the centre, the "Council of Ministers" is the real executive. The Council of Ministers is collectively responsible to the State Assembly.
- All of them must be the members of the state legislature. Those who are not the members at the time of their appointment must secure their seats in the legislature within a period of "Six months".
- All the ministers have to work as a team under the guidance of the Chief Minister. As long as the Chief Minister is in offices, the Council of Ministers also will be in power.
- If a no-confidence motion is passed against the Ministry in the Legislative Assembly, the State ministry led by the Chief Minister has to resign.
- If the Chief Minister resigns, the whole Council of Ministers have to resign. This is called "collective responsibility".

Article:

- 163. Council of Ministers to aid and advise Governor

- 164. Other provisions as to Ministers
- 166. Conduct of business of the Government of a State
- 167. to Governor, etc.

The Legislature

- The Constitution provides a legislature for every state. Most of the States have only unicameral legislature i.e. only Legislative assembly.
- Some State have bicameral legislatures, lower House (Assembly), Upper House (council). (example Bihar, Karnataka, Maharastra , Uttar Pradesh, Andhra Pradesh and Jammu-Kashmir).
- The lower house, legislative assembly represents the people of the state. The upper house, legislative Council represents special interests like teachers, graduates and local governments.
- **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.

The Legislative Assembly (Lower House)

- The Legislative Assembly is the real centre of power in the State. It consists of members directly elected by the people of basis of “universal adult franchise”.
- The strength of the assembly varies from state to state depending on the population. The maximum strength of the assembly is 500 and the minimum strength is 60.
- Some seats in the assembly are reserved for candidates from Scheduled Castes / Schedules Tribe.
- They are called “Reserved Constituencies”. In India a person who is over 25 years of age can contest in the election to the legislative assembly.
- The term of office of the legislative assembly is 5 years. It can be dissolved even before the expiry of its term.

Legislative Council

- Legislative council is a mere ornamental chamber and its very existence is depending on the will of the Legislative Assembly.
- Under the constitution, the Legislative Council can be created or abolished by a simple Act of Parliament on the recommendation of the state concerned under **Article 169**.
- But, the recommendation of state Legislative Assembly to create or abolish the Legislative Council should be supported by a special majority i.e., two-third majority. **Composition**
- The members of the Legislative Council shall not be more than one-third of the total members of the Legislative Assembly, but not less than forty. The Legislative Council of Tamil Nadu had 63 members.
- Normally, it is constituted by a mixture of direct election, indirect election and nomination.

- Elections to the Legislative Council are to be held by the system of proportional representation by single transferable vote system in the following manner (**Article: 170-171**).
- 1/3 members shall be elected by the Legislative Assembly
- 1/3 members shall be elected by the municipalities, district boards and other local authorities as specified by parliament by law.
- 1/12 members shall be elected by the graduates constituencies.
- 1/12 members shall be elected by the teacher's constituencies
- 1/6 members are nominated by the Governor From amongst persons who have distinguished themselves in the fields of literature, art, science, social service and cooperative movement.

Qualifications and term

- According to the Constitution, a person should have the following qualifications for the election to the Legislative Council.
- He must be a citizen of India.
- He must have attained 30 years of age.
- He must possess such other qualifications as may be laid down by parliament.
- Relating to the term of the Legislative Council, it is a continuing body, not subject to dissolution.
- Like the Rajya sabha of Parliament, its one-third members retire after every two years.
- A member of the Council has a six year term and he may be re-elected to the council.

Functions and powers

1. Ordinary bills may be introduced in this Legislative Council.
 2. It ratifies the money bills passed by the legislative Assembly.
 3. It can delay 14 days on money bills and 30 days on ordinary bills passed by the Legislative Assembly.
 4. It elects its Chairman and the Deputy Chairman amongst the members.
 5. It constitutes various committees for various business and
 6. It ratifies the ordinances promulgated by the Governor.
- Generally, the Legislative Council is a mere ornamental body and hence it is considered as weak house.
 - It does not take part in the election of the president or in the ratification of the Constitutional Amendment Bills.
 - In short, the Legislative Council is powerless in relation to the Legislative Assembly. To call it a Second Chamber or Upper House of a state legislature is a misnomer.

- As already stated, Legislative Council is not in the Legislature of Tamil Nadu. Hence, Tamil Nadu has the unicameral legislature

Speaker

- The Legislative Assembly is presided over by the Speaker. The Assembly elects from among its members a Speaker and a Deputy Speaker.
- In the absence of the Speaker, the Deputy Speaker performs his functions.

The Legislative Council (Upper House)

- The legislative council is a permanent house. But it is subject to abolition by permanent on the recommendation of State Assemblies.
- 1/3 of the members retire after every two year, and these vacancies are filled up by fresh elections and nominations. It cannot be dissolved.
- Its members are indirectly elected. The tenure of elected or nominated members is fixed as six years. And such members are eligible for re-election or renomination.
- The total number of the members in the Legislative Council of a state shall not exceed 1/3 of the total number of members of the Legislative Assembly of the state. But, it should not be less than 40.

Election to Upper House

- 1/3 of the members are elected by local bodies.
- 1/12 of the members are elected by Graduates of the universities in the State.
- 1/12 of the members are elected by Graduate teachers.
- 1/3 of the members are elected by the members of the Lower House.
- 1/6 are nominated by the Governor who are eminent in the field of literary excellence, art, social service or Co-operation.
- On November 1, 1986, the Upper House (Legislative Council) was abolished in Tamil Nadu by an Act.

Deputy Speaker of Assembly

- Like the Speaker, the Deputy Speaker is also elected by the assembly itself from amongst its members. He is elected after the election of the Speaker has taken place.
- Like the Speaker, the Deputy Speaker remains in office usually during the life of the assembly. However, he also vacates his office earlier in any of the following three cases:

1. if he ceases to be a member of the assembly;
2. if he resigns by writing to the speaker; and

3. if he is removed by a resolution passed by a majority of all the then members of the assembly. Such a resolution can be moved only after giving 14 days' advance notice.

- The Deputy Speaker performs the duties of the Speaker's office when it is vacant. He also acts as the Speaker when the latter is absent from the sitting of assembly. In both the cases, he has all the powers of the Speaker.
- The Speaker nominates from amongst the members a panel of chairmen. Any one of them can preside over the assembly in the absence of the Speaker or the Deputy Speaker.
- He has the same powers as the speaker when so presiding. He holds office until a new panel of chairmen is nominated.

The Chairman

- The Chairman (chair person he / she) is the Presiding Officer of the Upper house. The Members elect a Chairman and a Deputy Chairman from among themselves.
- In the absence of the chairman, the Deputy Chairman will officiate the functions of the Legislative Council.

The functions of the State Legislature

- The State Legislature, being the law making body of the State makes laws on all subjects mentioned in the "State List" as per the constitution. It can make laws on concurrent subjects also.
- The passing of "Bill" into "Law" has the same procedure as in the Central Legislature. (5 stages including 3 readings). Then it becomes an Act after the Governor's assent.
- The legislature controls the finances of the State. "Money Bills" have to be introduced only in the Legislative Assembly (Lower House).
- No new tax can be levied without the sanction of the Assembly. The appropriation Bills (Demand for Grants) are also introduced only in the Legislative Assembly.
- The Council of Ministers is responsible to the Legislative Assembly. The Ministers have to answer the questions put forth by the members of the Legislature.
- If the Assembly passes a vote of no confidence against the Ministry, they will be removed from office. Thus, the executive is accountable to the Legislature.
- The administration in the state, is run by a team of highest officials, consisting of officers from Indian Police Service, and the subordinate staff recruited through the state public service commission.

Money Bills

- The Constitution lays down a special procedure for the passing of Money Bills in the state legislature. This is as follows:

- A Money Bill cannot be introduced in the legislative council. It can be introduced in the legislative assembly only and that too on the recommendation of the governor.
- Every such bill is considered to be a government bill and can be introduced only by a minister.
- After a Money Bill is passed by the legislative assembly, it is transmitted to the legislative council for its consideration. The legislative council has restricted powers with regard to a Money Bill.
- It cannot reject or amend a Money Bill. It can only make recommendations and must return the bill to the legislative assembly within 14 days.
- The legislative assembly can either accept or reject all or any of the recommendations of the legislative council.
- If the legislative assembly accepts any recommendation, the bill is then deemed to have been passed by both the Houses in the modified form.
- If the legislative assembly does not accept any recommendation, the bill is then deemed to have been passed by both the Houses in the form originally passed by the legislative assembly without any change.
- If the legislative council does not return the bill to the legislative assembly within 14 days, the bill is deemed to have been passed by both Houses at the expiry of the said period in the form originally passed by the legislative assembly.
- Thus, the legislative assembly has more powers than legislative council with regard to a money bill. At the most, the legislative council can detain or delay a money bill for a period of 14 days.
- Finally, when a Money Bill is presented to the governor, he may either give his assent, withhold his assent or reserve the bill for presidential assent but cannot return the bill for reconsideration of the state legislature.
- Normally, the governor gives his assent to a money bill as it is introduced in the state legislature with his prior permission.
- When a money bill is reserved for consideration of the President, the president may either give his assent to the bill or withhold his assent to the bill but cannot return the bill for reconsideration of the state legislature.

High Court

- As per the **article 214** of the constitution, there shall be a High Court in each state.
- They may be a common High Court for two or more states or union territory, if it is sanctioned by a law of the Parliament.
- All other courts in the state are supervised by the High Courts are tried in the Supreme Court of India.
- The State High Court consists of a Chief Justice and other judges. They are all appointed by the president of India.

- The number of judges differ from time to time as it is not fixed.

Appointment of the Chief Justice and other Judges

- The President appoints the Chief Justice of a High Court in consultation with the Chief Justice of India, and the Governor of the concerned state.
- The chief justice of the high court is also consulted by the President in the appointment in the appointment of other judges.
- Generally, a senior most judge will be appointed as the Chief Justice.

Qualification for the judges

- i. He / She must be a citizen of India.
- ii. Must have at least "ten" years experience as judge of a court in any territory of India.

Or

- iii. Must have at least "ten" years experience as an Advocate in one or more High Courts in India.
 - Originally the age of retirement of the judges was fixed at **60**.
 - By the **15th Amendment to the Constitution in 1963** the age of retirement of the judges was raised to **62**.

Acting Chief Justice

- The President can appoint a judge of a high court as an acting chief justice of the high court when:
 1. the office of chief justice of the high court is vacant; or
 2. the chief justice of the high court is temporarily absent; or
 3. the chief justice of the high court is unable to perform the duties of his

Powers and functions of the High Court

- The High Court has two types of jurisdictions namely Original Jurisdiction and Appellate Jurisdiction.

Original Jurisdiction

- The original Jurisdiction of the High Court is restricted.
- Under **article 226** of the Constitution, the State High Court is empowered to issue writs and orders in the enforcement of fundamental rights and also other purposes.
- The original jurisdiction extends to the mater of admiralty, matrimonial (marriage and divorce), company law and contempt of court.

- The High Court like Supreme Court can issues writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo Warranto and Ceriorari for the enforcement of Fundamental Rights. – Article 226.

Appellate Jurisdiction

- Under Appellate Jurisdiction, the High Court is empowered to try both “Civil and Criminal” cases.
- The High Court also hear cases involving interpretation of the Constitution or law.
- In performing its judicial functions, the High Court enjoys full power and freedom to act within its jurisdiction.

Administrative powers

- There is a hierarchy of courts and judicial officers in the state. The High Court supervises the working of all subordinate courts.
- The other courts have to follow the rules and regulations framed by the high court. The High Court inspects the files of the lower courts.
- It can transfer the cases from one court to another.
- It may even call for returns from the subordinate courts.

Power of judicial review

- Like the Supreme Court, the High Court also has the power of “judicial review”.
- If any law goes against the Constitution, the High Court can declare such law null and void (ineffective).
- Thus it checks the arbitrary power of the executive and the legislature.

There is a bench of Chennai High Court functioning in Madurai.

- Even though all the three wings are independent organs, they cannot go beyond their limit in administration.
- If anyone organ violates the Constitution or misuses its power, the other organ will check its power and safeguard the people from being affected by it.
- This is called system of “Checks and Balances”.
- Thus it is clearly seen that the “Executive, Legislature and Judiciary” enjoy freedom in their respective spheres of activities.
- Similarly the judiciary safeguards the federal arrangements by preventing both the central government and state government from encroaching in to the rights of each other.

	<i>Name</i>	<i>Year of establishment</i>	<i>Territorial Jurisdiction</i>	<i>Seat</i>
1.	Allahabad	1866	Uttar Pradesh	Allahabad (Bench at Lucknow)
2.	Hyderabad ¹⁷	1954	Andhra Pradesh and Telangana	Hyderabad
3.	Bombay ¹³	1862	Maharashtra, Goa, Dadra and Nagar Haveli and Daman	Mumbai (Benches at Nagpur, Panaji

			and Diu	and Aurangabad)
4.	Calcutta ¹³	1862	West Bengal and Andaman and Nicobar Islands	Kolkata (Circuit Bench at Port Blair)
5.	Chhattisgarh	2000	Chhattisgarh	Bilaspur
6.	Delhi	1966	Delhi	Delhi
7.	Guwahati	1948 ¹⁰	Assam, Nagaland, Mizoram and Arunachal Pradesh ¹⁴	Guwahati (Benches at Kohima, Aizawl and Itanagar)
8.	Gujarat	1960	Gujarat	Ahmedabad
9.	Himachal Pradesh	1971	Himachal Pradesh	Simla
10.	Jammu and Kashmir	1928	Jammu and Kashmir	Srinagar and Jammu
11.	Jharkhand	2000	Jharkhand	Ranchi
12.	Karnataka	1884 ¹¹	Karnataka	Bengaluru
13.	Kerala	1958	Kerala and Lakshadweep	Ernakulam
14.	Madhya Pradesh	1956	Madhya Pradesh	Jabalpur (Benches at Gwalior and Indore)
15.	Madras ¹³	1862	Tamil Nadu and Puducherry	Chennai
16.	Manipur ¹⁵	2013	Manipur	Imphal
17.	Meghalaya ¹⁵	2013	Meghalaya	Shillong
18.	Orissa ¹⁶	1948	Odisha	Cuttack

19.	Patna	1916	Bihar	Patna
20.	Punjab and Haryana	1875 ¹²	Punjab, Haryana and Chandigarh	Chandigarh
21.	Rajasthan	1949	Rajasthan	Jodhpur (Bench at Jaipur)
22.	Sikkim	1975	Sikkim	Gangtok
23.	Tripura ¹⁵	2013	Tripura	Agartala
24.	Uttarakhand	2000	Uttarakhand	Nainital

Article:

- 214. High Courts for states
- 215. High Courts to be courts of record
- 216. Constitution of High Courts
- 217. Appointment and conditions of the office of a Judge of a High Court
- 218. Application of certain provisions relating to Supreme Court to High Courts
- 219. Oath or affirmation by judges of High Courts
- 221. Restriction on practice after being a permanent judge Salaries etc., of judges
- 222. Transfer of a judge from one High Court to another
- 223. Appointment of acting Chief Justice
- 224. Appointment of additional and acting judges
- 224A. Appointment of retired judges at sittings of High Courts
- 225. Jurisdiction of existing High Courts
- 226. Power of High Courts to issue certain writs
- 226A. Constitutional validity of Central laws not to be considered in proceedings under Article 226 (Repealed)
- 227. Power of superintendence over all courts by the High Court
- 228. Transfer of certain cases to High Court
- 228A. Special provisions as to disposal of questions relating to constitutional validity of state laws (Repealed)
- 229. Officers and servants and the expenses of High Courts
- 230. Extension of jurisdiction of High Courts to union territories
- 231. Establishment of a common High Court for two or more states
- 232. Interpretation (Repealed)