

12th Political Science Lesson 3 Notes in English

3] Executive

Introduction

Form of the State

- **The Union Executive**
 - ❖ The President of India
 - ❖ The Vice President of India
 - ❖ The Council of Ministers and the Cabinet, Headed By the Prime Minister
- The preamble of the constitution of India, Declares India a sovereign. **Socialist secular Democratic Republic.**
- Unlike **England** where a hereditary monarch, either a Queen or a king is the head of the State, India has an elected **President** as head of the state with fixed tenure of office.
- The President is the supreme head of all the constitutional wings of the State, i.e **the legislature.**
- **Executive, judiciary and armed forces.** The President supervises their functions and ensures adherence to constitutional provisions by these bodies.
- The President represents the entire nation and upholds the constitution in every sphere of State's activity.
- But unlike the **President of the USA**, Where the **President of the republic** wields de-facto (real, functional) executive powers, the President of Indian Republic is not vested with direct executive responsibilities;
- Such direct and real executive responsibilities are assigned by the Constitution, to a **Council of ministers** led by the prime minister, and such council of ministers, both collectively and individually responsible and accountable to the union legislature.
- Thus our Republican form of State is different from **American form of Republic**. Where it is Presidential executive.

President

- The President is **the head of the Indian State**. He is the **First Citizen of India** and acts as the symbol of Unity, Integrity and Solidarity of the Nation.

Qualification and Election of the President

Article 58 says;

1. No person shall be eligible for election as President unless he
 - ❖ is a citizen of India
 - ❖ has completed the age of 35 years
 - ❖ is qualified for election as a member of the Lok Sabha

2. A person shall not be eligible for **election as President** if he **holds any office of profit under the government of India**, or the government of any state, or under any local or other authority subject to the control of any of the said governments.
- Further **Article 52** provides that the nomination of a candidate for election to the office of President must be subscribed by at least 50 electors as proposers and seconded by another 50 electors of the **Electoral College**.
 - Every candidate has to make a security deposit of `15,000/- in the Reserve Bank of India.
 - This amount will be forfeited if the candidate does not secure **1/6 of the votes polled**.
 - **The President** is elected not directly by the people but by members of **Electoral College consisting of** ;
 - ❖ The elected members of both **the houses of Parliament**
 - ❖ The elected members of **the legislative assemblies of the states**
 - ❖ The elected members of **the legislative assemblies of the union territories of Delhi and Pondicherry**.
 - The President's election is held in accordance with the system of proportional representation by means of single transferable vote and the voting is by secret ballot.
 - This system ensures that the successful candidate is returned by **the absolute majority of votes**.
 - Each member of the **electoral college** is given only **one ballot paper**.
 - The voter, while casting his vote, is required to indicate his preferences by marking 1,2,3,4 etc against the names of the candidates.
 - This means the voter can indicate as many preferences as there are candidates in the fray.
 - In the first phase, the first preference votes are counted.
 - In case a candidate secures the required quota in this phase, he is declared elected. Otherwise, the process of transfer of votes is carried out.
 - The ballots of the candidate securing the least number of **first preference votes** are cancelled and his second preference votes are transferred to the first preference votes of other candidates.
 - This process continues till a candidate secures the required quota.

$$\text{Electoral Quota} = \frac{\text{Total number of valid votes polled in the election}}{\text{Number of electors to be elected}} + 1$$

Oath by the President

- Before entering upon his office, the President has to make and subscribe an oath or affirmation.
- In his oath, the President swears:
 - ❖ To faithfully **execute the office**;
 - ❖ To **preserve, protect and defend** the constitution and the law; and
 - ❖ To **devote himself to the service** and wellbeing of the people of India.

- **The oath of office to the President** is administered by the **Chief Justice of India** and in his absence in the presence of the senior most **judge of the Supreme Court**.

Entitlement to the President

- He is entitled without payment of rent, to the use of his **official residence (The Rashtrapathi Bhavan)**
- He is entitled to such **emoluments, allowances** and **privileges** as maybe determined by the Parliament
- The President is entitled to a **number of privileges** and immunities.
- He enjoys personal immunity from **legal liability for his official acts**.
- During his term of office, he is **immune from any criminal proceedings**

Term, Impeachment and Succession

Term

- **Article 56** says that the President shall hold office for a term of 5 years from the date on which he enters upon his office.
- However he can **resign** from his office at any time by addressing the resignation letter to **the Vice President**.
- Further he can also be removed from the office before completion of his term by the **process of impeachment**.
- The President can hold office beyond his **term of five years** until his successor assumes charge.
- He is also eligible for **re-election** to that office.

Impeachment

- **Article. 61** of the Constitution lays down a detailed procedure for the impeachment of the President.
- For the impeachment of the President, first, a charge for **impeachment** has to be made in either House of the Parliament by a **resolution signed by at least one fourth of the total number of members of the House** and moved by giving at least 14 days' advance notice.
- Such a resolution must be passed by a **majority** of not less than two thirds of the total number of members of the House when a charge is so presented by one House, it should be investigated by the other House.
- After the investigation, if a **resolution is passed** by the other house by a majority of two thirds of its total number of members, the President stands removed by impeachment from his office from the date of passing of the resolution.

Succession

- **A vacancy in the President's office** can occur in any of the following ways:

1. On the expiry of his tenure of **five years**
 2. By his **resignation**
 3. On his **removal by impeachment**
 4. By his **death**
 5. When he becomes **disqualified to hold office** or when his **election is declared void**.
- If the vacancy occurs due to resignation, removal or death then election to **fill vacancy** should be held within **six months** and the **Vice President** acts as the President until a **new President is elected**.
 - Further when the sitting President is unable to discharge his functions due to absence, illness or any other cause, the Vice President discharges his functions until the President resumes his office.
 - In case the office of the Vice President is vacant, the **Chief Justice of India** or if his office is also vacant, the senior most judge of the Supreme Court acts as the President or discharges the functions of the President.

Functions and Powers of the President

- Vast are the **functions and powers of the President**. He convenes the parliament, addresses and prorogues the same.
- He nominates 12 members of eminence in different fields to the **Rajya sabha** and **two Anglo Indian** members to the **Lok Sabha**.
- He enjoys veto power over non-money bills of the parliament and can send back **non-money bills** for reconsideration of the parliament, he can convene joint sessions of Rajya Sabha and Lok sabha;
- He can promulgate ordinances for a period not exceeding six months. He can also has **veto powers** over certain **State legislations**.
- He prompts and facilitates the **institution of council of ministers** headed by the **Prime Minister**, and ensures that **the council of Ministers** enjoy the support of the majority in the Lok Sabha.
- The President alone **installs the ministers** and **distributes** portfolios to them, he can also, dismiss the ministry, if he feels that the ministry does not enjoys the majority support in the Lok sabha.
- He **nominates members to various constitutional bodies**, including the judiciary, armed forces and diplomatic corps.
- **The President enjoys enormous powers** during the periods of emergencies, can suspend any law, can dissolve ministries and legislatures for specified periods.
- He can **commute capital punishments**.

Executive

1. Running of all **administration in his name**, making of rules for the conduct of government business and allocation of work among the ministers.

2. Having information of all important **decisions of the Cabinet**, referring any matter for the consideration of the Cabinet.
3. Making **important appointments and removals**.
4. Maintaining **foreign relations**.
5. Holding supreme command of **the Defence Forces**.
6. **Approving rules and regulations** for the working of **the Supreme Court** and other independent agencies.
7. **Sending directions and instructions** to state governments and invoking **Art.356** in case of breakdown of Constitutional machinery in a State.
8. **Running of the administration** of Union Territories and Scheduled and Tribal Areas.

Legislative

1. **Summoning and proroguing** sessions of **Parliament** and **dissolving Lok Sabha**.
2. Making **nomination of 12 members** to the **Rajya Sabha** and **2 to the Lok Sabha**.
3. **Delivering inaugural addresses** and sending messages to the Parliament.
4. Exercising **veto power** over non-money bills- absolute as well as suspensive.
5. Giving prior permission for introducing certain kinds of **bills in Parliament**.
6. **Promulgating an ordinance** if the Parliament is not in session.
7. **Causing presentation** in the **Parliament of reports** and recommendations of various commissions.
8. **Making appointment of presiding officer** pro tem of the Lok Sabha.
9. **Allowing extension, modification, or abrogation of law** in cases of ports and aerodromes.
10. Exercising **absolute veto power** over State legislation in certain cases.

Financial

1. Introduction of **money bill in Lok Sabha** with his prior recommendation.
2. Keeping control over **Contingency Fund of India**.
3. Causing **presentation of budget** in the Parliament.
4. Making **appointment of Finance Commission**.
5. Allowing determination of the **shares of States** in proceeds of **income tax** and of the amounts of grants-in-aid in lieu of **jute export duty** to the **States of Assam, Bihar, Odisha and W.Bengal**.

Judicial

1. **Granting commutation of sentence, reprieve or pardon, respites or remissions or suspension of punishments** by virtue of holding prerogative of mercy.
2. He **appoints the Chief Justice of India** and other judges of **Supreme Court** and **High Courts**.
3. He can seek **advice from the Supreme Court** on any question of law or fact.

Emergency

1. The constitution **confers extraordinary powers** on the President to deal with three types of emergencies
 - ❖ **National emergency (Art.352)**
 - ❖ **President's rule (Art.356 & 365)**
 - ❖ **Financial emergency (Art. 360)**
2. Art.352-President declares national emergency when security is threatened due to war, **external aggression and internal rebellion.**
3. Provision of emergency in a State(Art 356) in the event if breakdown of **constitutional machinery.**
4. Art 365 – enforcement of President's rule when a State does not obey **the union government direction or the Indian Constitution.**
5. The President under Art 360 has the power to declare financial emergency if he is satisfied that **financial stability or the credit of India** is threatened.

Miscellaneous

1. Reference of any matter of public importance involving a question of law or fact to the advisory opinion of **the Supreme Court.**
2. **Determining** the strength of **Judges in the High Court.**
3. Making **rules for the composition and working** of the Union Public Service Commission.
4. Setting up **official languages Commission** and taking steps for the progressive use of Hindi for official purposes on the basis of its recommendations.
5. Making special regulations for the **administration of the State of Jammu-Kashmir.**
6. Making **special rules and regulations** for the administration of **Scheduled and Tribal Areas.**

Vice President

- On the pattern of the **Constitution of USA**, the Indian Constitution provides for the office of the **Vice-President of India (Article 63).**
- **The Vice-President of India occupies the second highest office** in the country.

Election

- **The Vice-President of India** is elected by the elected members of both Houses of **Parliament by secret ballot** on the basis of proportional representation system, by means of the single transferable vote.

Qualification

- To be **eligible for election** to the office of Vice-President,
 - a) candidate must be a **citizen of India**,
 - b) must have completed **the age of thirty five years**,
 - c) must be **eligible for election** as a **member of the Rajya Sabha**, and

d) must **not hold any office of profit**.

- In this connection provisions similar to those relating to the President apply.

Terms of Office

- The Vice-President is elected for a term of **five years**.
- He can **voluntarily resign** from his office before the completion of his term of office by **writing to the President**.
- He may also be **removed** from his office, if a **resolution to that effect** is passed by the Rajya Sabha by an **absolute majority** of its members and agreed to by the Lok Sabha.
- However **fourteen days** have to be given to move such **resolution**.

Functions and Duties

- The Vice-President is the **ex-officio Chairman** of the Rajya Sabha (Article 64 of the Indian Constitution).
- He presides over the **meetings of the Rajya Sabha**.
- As the **presiding officer of the Rajya Sabha**, his functions and powers are similar to those of the **speaker of Lok Sabha**.
- He draws his salary as the **chairman of the Rajya Sabha**, because the Vice-President's office itself carries no salary.
- In the event of occurrence of any vacancy in the office of the President by reason of his death, resignation or removal, or otherwise, the Vice-President shall act as President until a **new President is elected**.
- This period shall **not exceed six months**.
- While acting as **President the Vice-President** gets salary, allowance, emoluments etc., as may be fixed by Parliament by law, and during that time he does not perform **the duties of the chairman of Rajya Sabha**.

The Prime Minister and Council of Ministers

- He describe Prime Minister as '**primus inter pares**' (first among equals) and 'key stone of the cabinet arch'.
- He said, "The head of the cabinet is 'primus intro pares', and occupied a position which so long as it lasts, is one of exceptional and peculiar authority". - **Lord Morely**

Introduction

- **Executive:** The Constitution provides for a collegiate executive i.e Council of ministers under the chair members of the Prime Minister
- **Meaning:** A body of persons having authority to initiate major policies, make decisions and implement them on basis of the Constitution and laws of the country.
- There are two important organs of the Union Government.

❖ The Union Legislature (or) the Union Parliament**❖ The Union Executive**

- In the previous unit you have learnt about the Union Legislature. Let us now deal with **Union Executive**.
- You should remember that articles 52 to 78 in Part V of the Indian Constitution deal with “Union Executive”.

The Prime Minister

- India has adopted the **British Parliamentary executive mode with the Prime Minister as the Head of the Government**.
- Prime Minister is the most **important political institution**.
- But in **the council of Ministers** (Cabinet) the Prime Minister is *primus inter pares* (first among equals).

Appointment

- **The Constitution** does not contain any specific procedure for the **selection and appointment of the Prime Minister**.
- There is **no direct election** to the post of the Prime Minister.
- **Article 75** says, the Prime Minister shall be appointed by the President.
- Appointment is not by the choice of the President.
- The President appoints the **leader of the majority party or the coalition of the parties** that commands a **majority in the Lok Sabha**, as the Prime Minister.
- In case **no single party gets a majority**, the President appoints the person most likely to secure a majority support.
- The Prime Minister does not have a **fixed tenure**.
- He/she continues in power so long as he/she remains the leader of the **majority party or coalition**.

Functions and Position

- **The first and foremost function of the Prime Minister** is to prepare the list of his ministers.
- He meets the **President with this list** and then the **Council of Ministers** is formed.
- Very important ministers are designated as **Ministers of the Cabinet rank**, others are called **Ministers of State**, while ministers belonging to **third rank** are known as **Deputy Ministers**.
- It is one of the discretionary powers of the Prime Minister to designate a minister as **Deputy Prime minister**.
- The President allocates **portfolios among the ministers** on the advice of the Prime Minister.
- The Prime Minister may keep **any department** or departments under his control;
 - ❖ he may also advise the President to reshuffle portfolios of his ministers from time to time;

- ❖ he may bifurcate or trifurcate a department or have different departments amalgamated into one department.

The Prime Minister's pre eminent position is evident from these points:

1. S(he) is the **leader of the party** that enjoys a **majority in the popular House of the Parliament** (Lok Sabha).
2. Has the **power of selecting other ministers** and also advising the President to dismiss any of them individually or require any of them to resign.
3. **The allocation of business** amongst the Ministers is a function of the Prime Minister. He can transfer a minister from one Department to another.
4. Is the **Chairman of the cabinet**, summons its meetings and presides over them. The Prime Minister is also the Chairman of many bodies like Inter-State Council, Nuclear command Authority and many more.
5. Is **in-charge of co-coordinating the policy** of the government and has accordingly a right of supervision over all the Departments.
6. While the **resignation of a Minister** merely creates a vacancy, the resignation or death of the Prime Minister means the end of the Council of Ministers.
7. The Prime Minister is the **sole channel of communication** between the President and the Ministers and between the Parliament and his Ministers. He/ she is the chief **spokesperson of the government** in foreign affairs.

Prime Minister's Office

Meaning

- Being the **head of the government** and the real executive authority, the Prime Minister plays a very vital role in the **politico-administrative** realm of our country.
- In order to fulfill his responsibilities, **the Prime Minister** is assisted by the **Prime Minister's Office (PMO)**.
- The Prime Minister's Office is an agency meant for providing secretarial assistance and advice to the Prime Minister.
- It is an extra constitutional body which offers important role in the top level decision making process of the **Government of India**.
- The Prime Minister's Office has the status of a department of the Government of India.
- The Prime Minister's Office came into existence in **1947**.
- Till 1977 it was called **Prime Minister's Secretariat (PMS)**.
- **The Prime Minister's Office** is headed politically by the **Prime Minister** and administratively by the **Principal Secretary**.

The Prime Minister's Office performs Several Functions

Functions

- Assists the prime minister in his overall responsibilities as head of the government, in maintaining communication with the **central ministries/departments** and the state governments.
- Helps the prime minister in his responsibilities as chairman of the **Niti Aayog** and the **National Development Council**.
- Looks after the public relations of the prime minister like contact with **the press** and **general public**.
- Deals with all references, which under **the Rules of Business** have to come to the Prime Minister.
- Provides assistance to the **Prime Minister** in the examination of cases submitted to him for orders under prescribed rules.
- Maintains harmonious relationship with the **President, Governors** and **foreign** representatives in the country.
- Acts as the **'think- tank'** of the Prime Minister. It deals with all such subjects that are not allotted to any **department/ministry**.
- It is not concerned with the responsibility of the **Prime Minister as the chairman of the union cabinet**.
- The cabinet cases are directly dealt by the cabinet secretariat, which also functions under the **direction of the prime minister**.

Central Council of Ministers

- **Article 74th** of the Constitution lays down that there shall be a council of ministers with the **Prime Minister** as the head to **aid and advise the President**, who shall in the exercise of his functions, act in accordance with the advice of the council of ministers.
- That means, there shall always be a council of ministers.
- The President accepts the advice of **the Council of Ministers**.
- The Council of Ministers consists of three categories of **ministers, namely, cabinet ministers, ministers of state** and **deputy ministers**.
- While the Cabinet ministers are involved in policy decision making, the other two categories have mere administrative responsibilities.
- The difference between them lies in their **respective ranks, emoluments** and **political importance**.
- At the top stands **the Prime Minister**, the supreme governing authority of the country.

Appointment of the Council of Ministers

- Under **Article 75th of the Constitution**, the Prime Minister is appointed by the **President** and the **other ministers** are appointed by the President on the advice of **the Prime Minister**.
- **The ministers** hold office during the pleasure of the President.

- While the ministers are also appointed by the President and are said to hold office during the pleasure of the **President as per the Constitution**, in actual practice, the ministers are selected by the Prime Minister and the President cannot appoint any one not recommended by **the Prime Minister**.

Collective and Individual responsibility of the Council of Ministers

- **The Constitution of India** provides that the Ministers are collectively and individually responsible to the Lok Sabha.
- The collective responsibility of **the Council of Ministers** means that the entire council of ministers is jointly responsible to the Lok Sabha for all the acts of the government.
- It also means that the ministers must not speak in public in different voices.
- **All the ministers of the government** are expected to be unanimous in support of policies on all public occasions and issues.

The Union Cabinet

- A Cabinet is the council consisting of **ministers of Cabinet rank**. It is the inner body within the council of ministers.
- It is an extra constitutional authority created out of the council of ministers.
- The whole council of ministers does not meet to discuss business, it is the cabinet which takes **policy decisions** and **advises the President**.
- The Cabinet is the **highest decision making executive body** which looks after the **administrative affairs** of the Government of India.
- It is the **nucleus of the council of ministers**.

Role and Functions of the Cabinet:

1. The Cabinet is the **highest decision making** and **policy** formulating authority in our politico-administrative system.
2. It deals with all **major legislative, financial and foreign policy matters**.
3. It exercises **control over higher appointments** like constitutional authorities and senior secretariat administrators.
4. It recommends **ordinances**, when the parliament is not in session and supervises the implementation of policies.
5. It appoints **enquiry commissions** and **resolves inter-departmental disputes**.
6. It is entitled to recommend to the President declaration of emergencies, dissolution of the Lok Sabha, **proroguing** and **adjourning** the parliament sessions.

Cabinet Secretary

- Every **cabinet minister** is assisted by a **cabinet secretary**.

- Among them **the cabinet chief secretary** is given a top place among the civil servants in the **official ladder**.
- He is the chairman **Senior Selection Board** that selects officers for the post of joint secretary in the central secretariat.
- He presides over the conference of chief secretaries which is held annually.
- He acts as the **chief advisor** to the Prime Minister on all aspects of administration and policy.
- He acts as the link between **Prime Minister's Office** and various administrative agencies and also between civil service and the political system.

The Executive of the Constituent State

Introduction

- **Articles 153 to 167 in Part VI** of the Indian Constitution deal with the State Executive.
- The same pattern of parliamentary form of government is followed in the states.
- The state executive consists of the **Governor, the Council of Ministers** headed by the **Chief Minister**.
- At the head of the **executive power** of a **State is the Governor** just as the President stands at the head of the executive power of the Union.
- All states of the **Indian Union** have the same pattern of government.
- Some States have **Bicameral legislature** and some states have unicameral legislature.
- **Part VI of the Constitution** which deals with the government in the states, is not applicable to the **state of Jammu and Kashmir**, which enjoys a special status and has a separate constitution of its own (**Article 370**).

The State Executive

- The Governor.
- The Council of Ministers Headed by the Chief Minister.

The Governor

Provision for Governor

- **Article 153 of the Constitution** lays down that there shall be a Governor for each state.
- Normally, there will be a **Governor** for each state but the **constitution amendment of 1956** makes it possible to appoint the same person as the Governor for two or more states.

Appointment of the Governor

- The Governor of a state is appointed by the **President of India. (Article 155)**. No person shall be appointed as a Governor unless he/she:
 - ❖ is a **citizen of India**
 - ❖ has completed the **age of 35 years**

- ❖ does not hold any **other office of profit**
- ❖ is not a member of **parliament or state legislature**.

Term of Office and Position

- The prescribed term of office for the **Governor is 5 years**.
- But he **holds office** at the **pleasure of the President**. (Article 156).
- He may be **removed by the President at any time**.
- He may be **transferred by the President** from one state to another too.
- The Governor draws a **salary** which is **fixed by the parliament**. He is also entitled to certain **allowances and benefits**.
- As per the **Constitution of India**, the Governor is the constitutional and executive head of the state.
- The executive power of the state is vested with the Governor. All executive actions are carried on in the name of the Governor.
- In actual practice, the **real executive powers** of the State lie with **the council of ministers headed by the Chief Minister**.
- The Governor acts according to the advice of the council of ministers, who are collectively responsible to the **legislative assembly of the state**.

The Governor of a State has more powers and performs a number of functions.

The powers and functions of the Governor are:

1. Executive Powers

- The Governor is the executive **head of the State Government**.
- The executive powers of the Governor are to be exercised by him either **directly** or through **officers subordinate** to him (i.e., ministers). (Art. 154).
- All **executive actions** are taken in his name.
- His **executive powers** extend to the administration of all matters included in the **State List**.
- The Governor appoints the **leader of the majority party** in the legislative assembly as the Chief Minister.
- He **appoints the other ministers** of the council of ministers according to the advice of the Chief Minister.
- The council of ministers hold office during the **pleasure of the Chief Minister**, because the Governor acts in accordance with the advice of the Chief Minister.
- The Governor **appoints the Advocate General of the state**, the **chairman and members of the state public service commission**, and determines the questions of appointments, postings, promotions, etc. of the judges of subordinate courts.
- The Governor is responsible for the smooth running of **the administration of the state**.

- In case he finds that the constitutional machinery of the state has broken down or the administration of the state cannot be carried on in accordance with the provisions of the constitution, he may recommend to the President to proclaim **constitutional emergency and impose President's rule under Article 356**.
- During the President's rule, as there is no council of ministers, the Governor carries on the administration of the state on behalf of the President.

2. Legislative Powers

- The Governor is a part of the **state legislature (Article 168)**. So, he has legislative powers.
- His legislative powers cover the following
 - i. He **summons prorogues and dissolved the legislative assembly**.
 - ii. He addresses **the members of the state legislature**.
 - iii. Without the **Governor's assent**, no Bill can become law even after it is passed by both the houses.
- **The Bills passed** by the legislature are sent to the Governor for his assent.
- He may give his **assent or withhold it or may reserve the bill** for the consideration of the President.
- The bills maybe returned by the **Governor for reconsideration**. (It may be noted that if the bill is again passed by the legislature with or without amendments, the Governor has to give his assent.)
- Under **Article 213**, the Governor may promulgate ordinance during the period when legislature is not in session. (However, for the continuation of such an ordinance, it has to be approved by the state legislature within six weeks from the re-assembly of the legislature.)
- In State where **bicameral legislature** exists.
- The Governor nominates one-sixth of the members of the legislative council from among persons having special knowledge or practical experience in respect of literature, science, art, co-operative movement or social service.
- He may also nominate a person from the **Anglo-India community to the legislative assembly**.

3. Financial Powers

- The Governor has **financial powers**.
- His **financial powers** cover the following:
 - i. **The finance minister** submits the budget or financial statement before the legislature. But **no money bill** can be introduced in the **legislative assembly** without the prior permission of the Governor.
 - ii. **No demand for grants** can be made without the recommendation of the Governor.
 - iii. The Governor is the **custodian of the contingency funds** of the state from where he can make payments to meet the emergency without the prior sanction of the legislature.

4. Judicial Powers

- The Governor has **judicial powers**.
- His judicial powers cover the following:
 - i. He determines the **questions of appointments, postings, promotions**, etc. of subordinate courts (ie., district courts and munsiff courts).
 - ii. He may be consulted by the **President of India**, while making appointments of the **judges of the high court**.
 - iii. The Governor has the power to pardon, suspend, remit or commute the sentence of any person convicted of an offence against any law relating to a matter to which the executive power of the state extends.

5. Discretionary Powers

- The Governor also has **discretionary powers**, i.e., he has the powers to act independently using his wisdom and discretion.
- His **discretionary powers** relate to:
 - i. Appointing a **new Chief Minister** in a situation where no single party or leader commands majority support.
 - ii. Dismissing a ministry where it **refuses to resign** even after losing majority support in the house or after being defeated on a **non-confidence motion**.
 - iii. Dissolution of assembly on the **advice of a Chief Minister** who has lost majority support.
 - iv. Sending to the President report about the failure of constitutional machinery and to impose **President's rule in the state**.
 - v. Giving assent to bills passed by the legislature.

Council of Ministers headed by the Chief Minister

Position of the Chief Minister

- The Chief Minister is the head of the cabinet and the council of ministers.
- In practice, he is the real executive head of the state.
- As per **Article 164(1) of the Constitution of India**, the Chief Minister of a state shall be appointed by the Governor of the State.

Powers and Functions of the Chief Minister

- As the real executive head of the state, the Chief Minister enjoys wide powers and performs a number of functions.
- The important powers and functions of the Chief Minister are:
 - i. As the head of the council of ministers, the Chief Minister has more powers in **ministry-making**. He can recommend **appointment of ministers** and **designate** them as **cabinet ministers** or **ministers of state** or **deputy ministers**. He can change the **portfolios of the ministers**. He can even recommend **the removal of ministers**.

- ii. He presides over the **meetings of the cabinet** and makes **major policy decisions of the Government**.
- iii. He acts as the sole **channel of communication** between the council of ministers and the Governor. He communicates to the Governor all the decisions of the cabinet relating to **administrative and legislative proposals**.
- iv. He scrutinizes all **papers, bills, resolutions**, etc. that are to be placed before the legislature.
- v. Though, in theory, all major appointments are made by the Governor, in practice, all such appointments are actually made on the advice of the Chief Minister.

State Council of Ministers

Introduction

- **Article 163(1) of the Constitution of India** provides that there shall be a council of ministers headed by the Chief Minister to aid and advise the Governor in the exercise of his functions except when he is required by the Constitution to act in his discretion.
- **The state council of ministers** is formed in the same manner as the union council of ministers is formed.
- The leader of the **majority party or coalition of parties** in the legislative assembly is appointed as **the Chief Minister by the Governor**.
- The other ministers in the council of ministers are appointed by the Governor on the advice of the Chief Minister.

Term of Office of the Council of Ministers

- As per the constitution, the council of ministers hold office during the **pleasure of the Governor**.
- But, in reality, the council of **ministers hold office** during the pleasure of the Chief Minister, because the Governor acts on the **advice of the Chief Minister**.
- The council of ministers are individually **responsible to the Chief Minister**.
- The council of ministers are **collectively responsible to the legislative assembly of the state**.
- That means, the council of ministers shall speak in one voice.

The State Cabinet

- The council of ministers consists of **cabinet ministers, ministers of state and deputy ministers**.
- Of the council of ministers, the cabinet ministers constitute the state cabinet.
- **The cabinet ministers of the state cabinet** are, generally, **the prominent ministers of the council of ministers**.
- It is **headed by the Chief Minister**.
- The cabinet takes decisions on behalf of the council of ministers, and so, **all the ministers** are bound by the **decisions of the cabinet**.

MORE TO KNOW:

- **Article 52** of our Constitution lays down that there shall be a **President of India**.
- **Article 53** lays down that the executive power of the Union shall be vested in the President and shall be exercised by him directly or indirectly.

The Official Residence of the President of India is

- **"The Rashtrapathi Bhavan"** Situated at Delhi.....

Fact

- When any person i.e., **VP, CJI** or **senior** most judge is acting as **President**, he enjoys all the **powers and immunities of the President** as is entitled to such emoluments, allowances and privileges as determined by the Parliament.

Fact

- The emergency powers of the President of India are specified in **part XVIII** of the Indian Constitution.

Shadow Cabinet

- In England, opposition party in parliament constitutes, a group of its members to examine portfolio wise issue through they are not the real executive. This tradition keeps the opposition well informed, and makes the government always on alert.

Have you heard of kitchen cabinet....?

- A Kitchen Cabinet is a still **smaller body or a cabinet** within a cabinet.
- It is an informal body and the real centre of power.
- Every Prime Minister in India had a **Kitchen Cabinet** or **Inner Cabinet**.
- **A circle within a circle**.
- It helps the **Prime Minister** in **maintaining secrecy** in making decisions on important political issues.

President's Rule:

- **The Governor** has **no emergency powers** to meet the situation arising from external aggression or armed rebellion, but he has the powers to make a report to the President that the government of the **state cannot be carried on in accordance with the provisions of the Constitution (Article 356)**, thereby inviting the President to assume to himself in the functions of the government of the state or any of them.

Advocate General

- Each state has an advocate general who is an official corresponding to the Attorney-**General of India** and having **similar functions for the state**.
- He is a person who is qualified to be a **judge of a High Court** and he is **appointed by the Governor**.

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