

Chapter - 14

GOVERNOR

The Constitution of India envisages the same pattern of government in the states as that for the Centre, that is, a parliamentary system. Part VI of the Constitution, which deals with the government in the states, is not applicable to the State of Jammu and Kashmir.

Articles 153 to 167 in Part VI of the Constitution deal with the state executive.

The governor is the chief executive head of the state. But, like the president, he is a nominal executive head the office of governor has a dual role.

Usually, there is a governor for each state, but the 7th Constitutional Amendment Act of 1956 facilitated the appointment of the same person as a governor for two or more states.

APPOINTMENT OF GOVERNOR

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.

The Draft Constitution provided for the direct election of the governor on the basis of universal adult suffrage. But the Constituent Assembly opted for the present system of appointment of governor by the president because of the following reasons:

The Constitution lays down only two qualifications for the appointment of a person as a governor. These are:

1. He should be a citizen of India.
2. He should have completed the age of 35 years.

Additionally, two conventions have also developed in this regard over the years. First, he should be an outsider, that is, he should not belong to the state where he is appointed, so that he is free from the local politics. Second, while appointing the governor, the president is required to consult the chief minister of the state concerned.

CONDITIONS OF GOVERNOR'S OFFICE

The Constitution lays down the following conditions for the the governor's office:

1. He should not be a member of either House of Parliament or a House of the state legislature.
2. He should not hold any other office of profit.
3. He is entitled without payment of rent to the use of his official residence (the *Raj Bhavan*).
4. He is entitled to such emoluments, allowances and privileges as may be determined by Parliament.
5. When the same person is appointed as the governor of two or more states, the emoluments and allowances payable to him are shared by the states in such proportion as determined by the president.

Like the President, the governor is also 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, even in respect of his personal acts. He cannot be arrested or imprisoned. However, after giving two months' notice, civil proceedings can be instituted against him during his term of office in respect of his personal acts.

The oath of office to the governor is administered by the chief justice of the concerned state high court and in his absence, the seniormost judge of that court available.

TERM OF GOVERNOR'S OFFICE

A governor holds office for a term of five years from the date on which he enters upon his office. However, this term of five years is subject to the pleasure of the President. Further, he can resign at any time by addressing a resignation letter to the President.

POWERS AND FUNCTIONS OF GOVERNOR

A governor possesses executive, legislative, financial and judicial powers more or less analogous to the President of India. However, he has no diplomatic, military or emergency powers like the president.

Executive Powers

1. All executive actions of the government of a state are formally taken in his name.
2. He can make rules specifying the manner in which the Orders and other instruments made and executed in his name shall be authenticated.
3. He can make rules for more convenient transaction of the business of a state government and for the allocation among the ministers of the said business.
4. He appoints the chief minister and other ministers.
5. He appoints the advocate general of a state and determines his remuneration. The advocate general holds office during the pleasure of the governor.
6. He appoints the state election commissioner and determines his conditions of service and tenure of office.
7. He appoints the chairman and members of the state public service commission.
8. He can seek any information relating to the administration of the affairs of the state and proposals for legislation from the chief minister.
9. He can recommend the imposition of constitutional emergency in a state to the president. During the period of President's rule in a state, the governor enjoys extensive executive powers as an agent of the President.
10. He acts as the chancellor of universities in the state.

Legislative Powers

1. He can summon or prorogue the state legislature and dissolve the state legislative assembly.
2. He can address the state legislature at the commencement of the first session after each general election and the first session of each year.
3. He can send messages to the house or houses of the state legislature, with respect to a bill pending in the legislature or otherwise.
4. He can appoint any member of the State legislative assembly to preside over its proceedings when the offices of both the Speaker and the Deputy Speaker fall vacant.
5. He nominates one-sixth of the members of the state legislative council from amongst persons having special knowledge or practical experience in literature, science, art, cooperative movement and social service.
6. He can nominate one member to the state legislature assembly from the Anglo-Indian Community.
7. He decides on the question of disqualification of members of the state legislature in consultation with the Election Commission.
8. When a bill is sent to the governor after it is passed by state legislature, he can:
 - (a) Give his assent to the bill, or
 - (b) Withhold his assent to the bill or
 - (c) Return the bill (if it is not a money bill) for reconsideration of the state legislature.
 - (d) Reserve the bill for the consideration of the president. In one case such reservation is obligatory, that is, where the bill passed by the state legislature endangers the position of the state high court. In addition, the governor can also reserve the bill if it is of the following nature:
 - (i) *Ultra-vires*, that is, against the provisions of the Constitution.

- (ii) Opposed to the Directive Principles of State Policy.
 - (iii) Against the larger interest of the country.
 - (iv) Of grave national importance.
 - (v) Dealing with compulsory acquisition of property under Article 31A of the Constitution.
9. He can promulgate ordinances when the state legislature is not in session.
 10. He lays the reports of the State Finance Commission, State Public Service Commission Comptroller and Auditor-General relating to the accounts of the state, before the state legislature.

Financial Powers

1. He sees that the Annual Financial State-ment (state budget) is laid before the state legislature.
2. Money bills can be introduced in the state legislature only with his prior recommendation
3. No demand for a grant can be made except on his recommendation.
4. He can make advances out of the Contingency Fund of the state to meet any unforeseen expenditure.
5. He constitutes a finance commission after every five years to review the financial position of the panchayats and the municipalities.

Judicial Powers

1. He can grant pardons, reprieves, respites and remissions of punishment or suspend, remit and commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the state extends.
2. He is consulted by the president while appointing the judges of the concerned state high court.
3. He makes appointments, postings and promotions of the district judges in consultation with the state high court.
4. He also appoints persons to the judicial service of the state in consultation with the state high court and the State Public Service Commission.

Comparing Pardoning Powers of President and Governor

<i>President</i>	<i>Governor</i>
1. He can pardon, reprove, respite, remit, suspend or commute the punishment or sentence of any person convicted of any offence against a Central law.	1. He can pardon, reprieve, respite, suspend or commute the punishment or sentence of any person convicted of any offence against a state law.
2. He can pardon, reprieve, respite, remit, suspend or commute a death sentence. He is the only authority to pardon a death sentence.	2. He cannot pardon a death sentence. Even if a state law prescribes for death sentence, the power to grant pardon lies with the President and not the governor. But, the governor can suspend, remit or commute a death sentence.
3. He can grant pardon, reprieve, respite, suspension, remission or commutation in respect to punishment or sentence by a court-martial (military court).	3. He does not possess any such power.

CONSTITUTIONAL POSITION OF GOVERNOR

The governor has certain special responsibilities to discharge according to the directions issued by the President. In this regard, the governor, though has to consult the council of ministers led by the chief minister, acts finally on his discretion. They are as follows:

1. Maharashtra—Establishment of separate development boards for Vidarbha and Marathwada.
2. Gujarat—Establishment of separate development boards for Saurashtra and Kutch.
3. Nagaland—With respect to law and order in the state for so long as the internal disturbance in the Naga Hills–Tuensang Area continues.
4. Assam—With respect to the administration of tribal areas.
5. Manipur—Regarding the administration of the hill areas in the state.
6. Sikkim—For peace and for ensuring social and economic advancement of the different sections of the population.

CHIEF MINISTER

In the scheme of parliamentary system of government provided by the Constitution, the governor is the nominal executive authority (*de jure* executive) and the Chief Minister is the real executive authority (*de facto* executive). In other words, the governor is the head of the state while the Chief Minister is the head of the government.

APPOINTMENT OF CHIEF MINISTER

The Constitution does not contain any specific procedure for the selection and appointment of the Chief Minister. Article 164 only says that the Chief Minister shall be appointed by the governor. In accordance with the conceptions of the parliamentary system of government, the governor has to appoint the leader of the majority party in the state legislative assembly as the Chief Minister. But, when no party has a clear majority in the assembly, then the governor may exercise his personal discretion in the selection and appointment of the Chief Minister.

A person who is not a member of the state legislature can be appointed as Chief Minister for six months, within which time, he should be elected to the state legislature, failing which he ceases to be the Chief Minister.

OATH, TERM AND SALARY

Before the Chief Minister enters his office, the governor administers to him the oaths of office and secrecy.

In his oath of secrecy, the Chief Minister swears that he will not directly or indirectly communicate or reveal to any person(s) any matter that is brought under his consideration or becomes known to him as a state minister except as may be required for the due discharge of his duties as such minister.

The term of the Chief Minister is not fixed and he holds office during the pleasure of the governor. However, this does not mean that the governor can dismiss him at any time. He cannot be dismissed by the governor as long as he enjoys the majority support in the legislative assembly.

POWERS AND FUNCTIONS OF CHIEF MINISTER

In Relation to Council of Ministers

- (a) The governor appoints only those persons as ministers who are recommended by the Chief Minister.
- (b) He allocates and reshuffles the portfolios among ministers.
- (c) He can ask a minister to resign or advise the governor to dismiss him in case of difference of opinion.
- (d) He guides, directs, controls and coordinates the activities of all the ministers.
- (e) He can bring about the collapse of the council of ministers by resigning from office.

In Relation to the Governor

- (a) He is the principal channel of communication between the governor and the council of ministers. It is the duty of the Chief Minister:
- (b) He advises the governor with regard to the appointment of important officials like advocate general, chairman and members of the state public service commission, state election commissioner, and so on.

In Relation to State Legislature

- (a) He advises the governor with regard to the summoning and proroguing of the sessions of the state legislature.
- (b) He can recommend the dissolution of the legislative assembly to the governor at any time.
- (c) He announces the government policies on the floor of the house.

Other Powers and Functions

- (a) He is the chairman of the State Planning Board.
- (b) He acts as a vice-chairman of the concerned zonal council by rotation, holding office for a period of one year at a time.
- (c) He is a member of the Inter-State Council and the National Development Council, both headed by the prime minister.
- (d) He is the chief spokesman of the state government.
- (e) He is the crisis manager-in-chief at the political level during emergencies.
- (f) As a leader of the state, he meets various sections of the people and receives memoranda from them regarding their problems, and so on.
- (g) He is the political head of the services.

STATE COUNCIL OF MINISTERS

As the Constitution of India provides for a parliamentary system of government in the states on the Union pattern, the council of ministers headed by the chief minister is the real executive authority in the political-administrative system of a state.

CONSTITUTIONAL PROVISIONS

Article 163—Council of Ministers to aid and advise Governor

1. There shall be a Council of Ministers with the Chief Minister as the head to aid and advise the Governor in the exercise of his functions, except in so far as he is required to exercise his functions in his discretion.
2. If any question arises whether a matter falls within the Governor's discretion or not, decision of the Governor 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 advice tendered by Ministers to the Governor shall not be inquired into in any court.

Article 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. However, in the states of Chhattisgarh, Jharkhand, 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 back-ward classes or any other work. The state of Bihar was excluded from this provision by the 94th Amendment Act of 2006.
2. The total number of ministers, including the chief minister, in the council of ministers in a state shall not exceed 15 per cent of the total strength of the legislative assembly of that state. But, the number of ministers, including the chief minister, in a state shall not be less than 12. This provision was added by the 91st Amendment Act of 2003.
3. A member of either House of state legislature belonging to any political party who is disqualified on the ground of defection shall also be disqualified to be appointed as a minister. The provision was also added by the 91st Amendment Act of 2003.
4. The ministers shall hold office during the pleasure of the Governor.

5. The council of ministers shall be collectively responsible to the state Legislative Assembly.
6. The Governor shall administer the oaths of office and secrecy to a minister.
7. A minister who is not a member of the state legislature for any period of six consecutive months shall cease to be a minister.
8. The salaries and allowances of ministers shall be determined by the state legislature.

RESPONSIBILITY OF MINISTERS

Collective Responsibility

The fundamental principle underlying of parliamentary system of government is the principle of collective responsibility. Article 164 clearly states that the council of ministers is collectively responsible to the legislative assembly of the state. This means that all the ministers own joint responsibility to the legislative assembly for all their acts of omission and commission.

The principle of collective responsibility also men that the cabinet decisions bind all cabinet ministers (and other ministers) even if they deferred in the cabinet meeting.

Individual Responsibility

Article 164 also contains the principle of individual responsibility. It states that the ministers hold office during the pleasure of the governor. This means that the governor can remove a minister at a time when the council of ministers enjoys the confidence of the legislative assembly.

No Legal Responsibility

As at the Centre, there is no provision in the Constitution for the system of legal responsibility of the minister in the states. It is not required that an order of the governor for a public act should be countersigned by a minister.

