

Lesson-7

The State Government

Formation of State Legislatures and their Functions-

According to the Constitution there is a provision of state legislature in each state of India. In article 168 of the Constitution it is mentioned that, there will be a legislature for every state which will be constituted by Governor and a house or two. Some states will have two houses, and they will be named as Vidhan Sabha (Legislative Assembly) and Vidhan Parishad (Legislative Council) respectively. In each state there is a house of elected representatives on the basis of adult franchise by the people. This house of Legislative body is called Vidhan Sabha (Legislative Assembly) and in some states which have the second house also, call it Vidhan Parishad (Legislative Council). The right to decide whether the legislative bodies of the states would be unicameral or bicameral is reserved with the elected representative of the state and the Parliament of India. At present in the Indian Union only 7 States have the provision for bicameral houses; Uttar Pradesh, Jammu and Kashmir, Maharashtra, Karnataka, Bihar, Andhra Pradesh and Telangana, and the rest of the states have unicameral system only.

The state legislature is made up of following three parts in the above 7 states, having Bicameral Legislature.

1. Governor
2. Legislative Assembly, which is called as the First or the Lower house.
3. Legislative Council which is called as the Second or the Upper House.

Formation of the Legislative Assembly

The Legislative Assembly is the First or the

popular house of the Legislature

1. The number of members-

In the Constitution only minimum and maximum number of the members of Legislative Assembly of a state has been fixed. According to article 170 of the Constitution the maximum and minimum number of any Legislative Assembly will be 500 and 60 respectively. Each state is divided into geographical constituencies for the election in such a way that each member of the Legislative Assembly represents at least 75000 people.

2. Reservation of the seats-

Scheme of the reservation of seats in the State Legislatures has been fixed for SC and ST till January 2020 (95th amendment of the Constitution 2009).

If Governor of a state has an opinion that the Anglo-Indian community hasn't got enough representation in state legislature, then he can nominate a member from this community.

3. Election Process-

Apart from the nominated member from the Anglo-Indian community all other members of the legislature will be elected directly.

Adult franchise and unified election process with the method of simple majority is adopted for the elections.

All the constituencies have been made for single membership only.

4. Qualifications for the members-

For the membership of the Legislative

Assembly a person should be-

1. A citizen of India.
2. Not less than 25 years of age (for Legislative Assembly), and not less than 30 years of age (for legislative council) as per article 123 of Indian Constitution.
3. Should not hold any office of profit under State Government or the Government of India.
4. Should not be of unsound mind and stand so declared by a court.
5. Should fulfil the required conditions determined by the state legislature.

Termination of the membership-

In following conditions the membership of the legislature gets terminated:

1. If a person gets elected for both the houses of legislature, he has to resign from one house. Similarly no one can become a member of state legislature and the Parliament together.
2. If any member remains absent without the permission of the house for 60 days continuously from the respective house.
3. If he has lost the required eligibility for the concerned house after getting the membership or later creates any stipulated ineligibility.

5. Tenure-

The term of the Legislative Assembly is 5 years. It can be dissolved prematurely by the Governor, but after the promulgation of emergency the parliament can extend the tenure of legislature according to the law, which cannot be extended for more than 1 year at a time and would not be retained for more than 6 months after the proclamation of the end of emergency.

6. Office Bearers-

There are two main office bearers in the state Legislative Assembly (1) Speaker (2) Deputy Speaker.

Both of them are elected from the members of Legislative Assembly. Members of Legislative

Assembly elect from amongst themselves.

Their tenure is similar to the tenure of Legislative Assembly.

Meanwhile the speaker can submit his resignation to Deputy Speaker and the Deputy Speaker submits his resignation to the speaker vice versa.

Both of them can be removed from the concerned posts on the basis of the proposal accepted with majority of MLAs. The intimation regarding this proposal is essential to be given to the concerned (speaker or deputy speaker) before within 14 days.

Powers and Functions of the Speaker-

The powers and functions of the speaker are as follows-

1. He presides over the sittings of Legislature.
2. Maintaining peace and order in the house is a major responsibility of speaker and he holds every right to take all necessary steps for this purpose.
3. Only by his command any member of the house can give a speech in the house.
4. He can order to remove all the non Parliamentary or rude words from the proceedings of the house.
5. He can determine the order of proceeding in the house on the advice of the leader of house.
6. He accepts/does not accept the questions when they are anomalous.
7. He makes the declaration of results after the voting.
8. In normal circumstances, he does not participate in the voting in house but if there is a situation of equal votes in pros and cons on an issue, he uses the casting vote.
9. Whether a bill is money bill or not, is decided by the speaker only.
10. He gives decision on the petitions of defection.

In the absence of Speaker the Deputy Speaker carries out all his functions.

Formation of Legislative Council-

The Legislative Assembly keeps the right of making recommendations to Parliament for the creation and termination of Legislative Council. According to article 169, if the Legislative Assembly by the majority of its total members and with two third majority of its present and participating members passes the motion of this intent, then the Parliament will make the legislation for creation or termination of the Legislative Council in that state.

1. Number of members-

The Legislative Council is also called the Second or Upper house of the Legislature. There is a provision in the Constitution that the number of MLC would not exceed the one third number of MLA in that Legislative Assembly.

At the same time it is also said that its membership shall not remain less than 40. Jammu and Kashmir has been kept an exception in this regard.

2. Election and Nomination of the Members-

$\frac{5}{6}$ th members of the Legislative Council are elected and the remaining $\frac{1}{6}$ th members are nominated. These members of the Council are elected indirectly and their elections are held according to the Single Transferable Vote system of proportional representation method. Following electoral colleges elect the members of Legislative Council.

Electoral Board of Local Bodies-

The nearest as good as possible one third of all members is elected by the municipality, district Council and such other local bodies as defined by the Parliament and law.

Electoral College of Legislative Assembly-

One third nearest as good as possible members are elected by the members of Legislative Assembly from amongst the individuals who are not the members of Legislative Assembly.

Electoral College of Graduates-

This is the electoral college of those persons

who live in the state concerned and has passed the Graduate Level exam and has also spent more than 3 years after passing it. This Electoral College elects the nearest as good as possible $\frac{1}{12}$ th part of the total members.

Electoral College of Teachers-

In it, there are teachers who have been teaching in a secondary school or in a higher education institute under the state for 3 years. This electoral college elects nearest $\frac{1}{12}$ th part of the total members.

V. Members Nominated by Governor-

Almost $\frac{5}{6}$ th of total number of members mentioned above are elected and the remaining $\frac{1}{6}$ th of the total members are nominated by the Governor from amongst those people who possess special interest in the field of literature, science, arts, social services etc.

3. Qualifications for the Members

Qualifications for the membership of Legislative Council are the same as of the Legislative Assembly; the only difference is about the age limit which must be 30 years for the Legislative Council. Apart from that the elected members should be registered as voters in their constituency. Election of the members of Legislative Council is held by The Single Transferable Vote system based on the proportional representation method. All other three electoral colleges except the electoral college of Legislative Assembly are set up by the law made by Parliament

4. Tenure-

The Legislative Council is a permanent house in the view that the whole Legislative Council cannot be dissolved at a time. It cannot be dissolved by the Governor also. The tenure for the MLC is 6 years. $\frac{1}{3}$ rd of its members vacate their seats after every two years.

5. Office Bearers-

The Legislative Council itself elects Chairman and Vice Chairman from amongst its members. The council also holds the power to

remove them from their respective post.

Powers and functions of the Legislative Council-

The powers and functions of the Legislative Council can be mentioned in the following terms:

1. Law Making-

Apart from the money bill, the rest of the bills can be moved in any of the houses of Legislature and should get them approved by both the houses, but herein it is also said in article 197 of the Constitution that, if a bill is rejected by the Legislative Council after having passed in Legislative Assembly or if the Legislative Council makes such type of amendment in the bill which is not accepted by the Assembly, or the bill is not passed by the Legislative Council within 3 months of its induction in the house, then the Legislative Assembly will again approve and send the bill to Legislative Council. If again the bill is disapproved by the Council or it does not pass the bill within a month, or again makes such type of amendments which are not accepted by the Legislative Assembly, then the bill will be deemed as passed by both the houses in spite of without getting passed by the Legislative Council. Thus the Legislative Council can only defer an ordinary bill for 4 months. The council cannot terminate any bill itself.

2. Executive Powers-

The members of Legislative Council can become the cabinet members. The Legislative Council can control the Council of Ministers on the grounds of questions, proposals discussions and debates but it cannot hold the power to sack the Council of Ministers. This work can be performed only by the Legislative Assembly.

3. Financial work-

It is clearly mentioned in the Constitution that, money bills can be introduced in Legislative Assembly only and not in the Legislative council.

After passing the money bill the Legislative Assembly send it to the Council for its recommendation, and then the Council can defer it

only for 14 days. If the Council does not return the bill to the Legislative Assembly with its recommendations, then the bill is deemed as passed in the same form by both the houses in the condition in which it was passed by Legislative Assembly.

The Powers and Functions of State Legislative Assembly-

The state Legislative Assembly is the legislative branch of the state, and this assembly is empowered with extensive powers given by the Constitution.

In following terms, the powers of state Legislative Assembly can be studied.

1. Legislative Powers-

The state assembly holds the power to make laws on all those subjects which are given both in state list and the concurrent list subsequently. The ordinary bill can be proposed in any house of the state legislature, but the conclusive power regarding it, is only possessed by the Assembly.

2. Financial Powers-

Legislature, mainly the Assembly holds full control over the 'public exchequer'. Only after the approval of annual budget by the state assembly, any work related to income and expenditure can be undertaken by the government. After the passing of supply bill, government can withdraw money from the consolidated fund for expenditure.

3. Administrative Powers-

Due to the Constitutional arrangements established in the states by the Constitution, the state cabinet is accountable to the legislature, especially to the Legislative Assembly for its policy and functions. Questions can be asked to the ministers by the members of the Assembly or the Council, regarding their departments. Motion of criticism can be passed against the cabinet, or the Adjournment Motion too can be passed. Apart from that, no confidence motion can also be passed by the Assembly due to which the cabinet has to resign.

4. Power to Amend the Constitution-

For the amendment in some sections of our Constitution, it is mandatory for such a proposal to be accepted by at least half of the Legislature of the states, which has been passed with special majority by the Parliament. The state legislature does not hold the right to propose amendments in the constitution. The State Legislatures can only support or reject this type of motions.

5. Election Related Powers

The elected members of the state assembly take part in the election of The President and the Rajya Sabha members.

The current situation and process for formation of Legislative Council in Rajasthan-

There is only a single house of legislature at present in Rajasthan which is known as VIDHAN SABHA. The proposal for the formation of Legislative Council has been passed and sent to Central Government for its permission and approval. At present the proposal is pending at the centre. So there is no second house of legislature in Rajasthan. The process of formation of the second house would be started after the approval from the Central Government.

STATE EXECUTIVE:

Governor, Chief Minister, Cabinet-Functions and Powers-

The state executive includes a Governor and a Council of Ministers. The Parliamentary system has been established by the Constitution in the states too. And in this Parliamentary system the Governor is the Constitutional head of the executive while the Chief Minister and the Council of Ministers are the real head of that regime.

THE CONSTITUTIONAL HEAD OF THE STATE : GOVERNOR

Designation of the Governor-

The Governor of the state remains on his post till the wish of the President. He or she will be appointed for a term of 5 years, but can remain in the office till the appointment of his/her successor.

The Governor can be removed from his post by The President before 5 years of his tenure.

He or She could be transferred from a state to another. If the Governor wishes, he can also quit his post before his tenure.

Healthy convention regarding the appointment of Governor

Since the implementation of the Constitution of India, some healthy conventions have been developed so far regarding the appointment of Governor.

- I. The Governor should not be an inhabitant of the same state in which he is to be appointed.
- II. Before the appointment of Governor, the Central Government should have consultation with the Chief Minister of that state to get his consent.

Qualifications of the Post and Salary-

Two qualifications are necessary for the appointment of Governor.

- I. He should be a citizen of India.
- II. He must be over 35 years of age.

The Governor cannot be a member of Parliament or the state legislature, and if he holds the same post, then has to leave that membership from the date of his appointment as Governor. The Governor cannot enjoy any office of profit.

Pay and Allowances-

At present, the Governor receives Rs. 1,10,000 monthly as salary, apart from that he gets free accommodation, allowances and all other facilities which are allocated by the Parliament according to the law.

Powers and Functions of Governor-

The Constitution has provided adequate powers to the Governor. The Governor holds the same position as The President keeps at the centre. So there is much resemblance found in some of the powers of both posts. In the words of Durga Das Basu : “In a slight way the powers of Governor are similar to The President's except for the diplomatic, military and emergency situation”. The powers of

the Governor can be studied in following terms:

1. Executive Powers-

The executive powers of the state are vested with Governor, which he enjoys himself and by the subordinate officers, he appoints the chief minister, and the other ministers on the advice of chief minister. He also appoints Advocate General, and the Chairman and the members of the state public service commission. The President holds consultation with Governor before the appointment of the judges of High court. The executive powers of the Governor extend up to the subjects of concurrent list. On the subjects of concurrent list, he exercises his powers by the assent of the President. Regarding the functions of the state government, he makes rule, he allocates the portfolios from amongst the ministers. He holds the power of getting information from Chief Minister, regarding the subjects related to the governance. He can ask the Chief Minister to put the personal decision of any minister for the consideration of whole cabinet. Governor administers Oath of Post and Secrecy to the members of cabinet, confirms their resignations and also removes them from their concerned posts including the chief minister.

2. Legislative Powers-

Governor is an integral part of the legislature of a state. He holds important powers in the field of legislation. He convenes the session of legislature, adjourn it and can dissolve the lower house of the legislature. After the general election, he addresses the first meeting of legislature. And still after the first meeting, he can send messages to the legislature. The approval of Governor is essential on the bill passed by state assembly. He can reject the bill, or can return the bill to the legislature for reconsideration, if the legislature passes the bill for a second time, then Governor is compelled to give his approval. He can put aside some bills reserved for the consideration of the President. If the state Legislative Assembly is not in session then Governor can issue the ordinance. The ordinance

will be recognised as the same act as the act passed by the state legislature. This ordinance is applicable for only six weeks after the commencement of the next sitting of state legislature. If the legislature rejects the ordinance before six weeks then the ordinance will be deemed as terminated. At the same time, before issuing the ordinance regarding certain subjects Governor has to take approval from the President. Governor can nominate 1/6th members in Legislative Council from the pool of such people who hold the distinct and practical knowledge of literature, arts, science, cooperative movement and social services. In his opinion if the Anglo-Indian community has not got sufficient representation in the Legislative Assembly, then he can nominate a member from this particular community.

2. Financial Powers-

The Governor holds some financial powers too. The money bill cannot be brought in state Legislative Assembly without the permission of Governor. He gets the budget presented before the Legislative Assembly every year, and no demand for grants can be made without his permission. Governor can make the demand of extra, supplementary or more grants too. The consolidated fund of the state is kept under the authority of Governor.

3. Judicial Powers-

The Governor can reduce, postpone or change the punishment or even forgive the people who have committed a crime against the law related to the subjects on which the legislative power of state is extended in accordance with the article 161 of the Constitution. He accepts the annual reports of State Public Service Commission and the report of Auditor General regarding the income and expenditure of the state and puts them before the Legislature. In his opinion if it is not possible to govern the state according to the Constitution, he can inform The President about the failure of Constitutional system in the state, and recommends for President's rule. President's rule

can be imposed based on his report by the Union Cabinet in accordance with section 356. Being the chancellor of the state, Governor can appoint or remove the Vice Chancellors of the universities in his state except for the central universities.

4. Miscellaneous Powers-

In addition to above mentioned powers the Governor has some other powers too:

Position of the Governor-

According to section 163, leaving those matters where it is expected by the Constitution, or the Governor under Constitution that he should perform his duties using his discretion, there would be a Council of Ministers to assist the Governor to advice and help in discharging his duties, which will be headed by Chief Minister. Presently the Governors of Jammu and Kashmir, Nagaland, Sikkim and Arunachal Pradesh only enjoy this sort of discretionary powers. The Governor is not provided with powers of discretion by the Constitution and according to the tradition of Parliamentary rule, it is expected from him that he would discharge his duties as a Constitutional head, nevertheless there may be some occasions where he can use his discretion.

Following can be the such occasions-

- I** Selection of Chief Minister in special circumstances
- II** To overthrow the Council of Ministers.
- III** To convene the session of Legislative Assembly.
- IV** Dissolution of Legislative Assembly.
- V** Receiving information from Chief Minister.
- VI** Reporting to The President about Constitutional status of the state.
- VII** Sending a Bill passed by state Legislative Assembly for the President's approval.
- VIII** Not accepting a Bill passed by the state legislature, and to return it for reconsideration.
- IX** Seeking guidance of The President before issuing an ordinance.

It is very clear from all the facts mentioned above that although Governor may not be called as the real head of the executive of a state, but along with it, he is not the nominal chairperson only, but he is an officer who can play a significant role in the governance of a state.

Real Executive: The Council of Ministers

Parliamentary rule has also been set up in States by the Constitution, and in the Parliamentary system, the real executive power of the state lies in Council of Ministers, which is accountable to the Legislative Assembly.

Formation of Council of Ministers in a state.

1. Appointment of chief minister-

The appointment of Chief Minister is the first step towards the formation of Council of Ministers of a state. Article 164 states that the Governor will appoint a Chief Minister and then other ministers will be appointed on the advice of Chief Minister. The tradition in this regard is that, the Governor appoints the leader of majority party as Chief Minister in state Legislative Assembly.

2. Selection of Ministers-

Other ministers are selected by the Chief Minister only, and he gives the list of ministers with names and departments to the Governor.

I. It is a privilege of the Chief Minister to form the Council of Ministers. Names of ministers in the cabinet are decided only by the Chief Minister. The size of cabinet has been limited up to 15% of the number of members of Legislative Assembly by the 91st Amendment of Constitution. Following facts are kept in mind by the Chief Minister while selecting the ministers.

- I** In a consistent manner, all regions and sections of society in the state have got representation in the cabinet.
- II** Generally the Chief Minister selects the cabinet from his own party members, so that the Council of Ministers can act as a single unit.

3. Qualifications of ministers-

It is essential for all the ministers to be a member of any house of the Legislature, if a minister is not a member of the Legislature at the time of appointment, then it is necessary for him to get the membership of Legislature within 6 months of his appointment. Failing to do so, the minister has to resign from the cabinet.

4. Distribution of Work amongst Ministers-

The Governor distributes the portfolios to ministers on the advice of chief minister. A minister often holds the authority of a single department, but sometimes he can keep charge of more than one department also.

5. Oath taken by the Ministers-

Before assuming the office, ministers have to take two types of oaths before the Governor.

- I For discharging the duties of post.
- II For secrecy.

6. Categories of Ministers-

There are three categories of ministers in the states also.

- 1. Cabinet ministers.
- 2. Minister of state.
- 3. Deputy Ministers.

Most important are the cabinet members. The policy of government is collectively decided by the cabinet only. Ministers of state are at the second level, some ministers of state are given independent charge of a particular department too. And there are deputy ministers ranked after the ministers of state which work as assistant ministers to the cabinet members.

7. Tenure of Council of Ministers-

The tenure for Council of Ministers is not fixed. A Minister remains in office as long as he enjoys the confidence of majority in the assembly. Generally the maximum time fixed for the tenure of Council of Ministers is 5 years, because the tenure of Legislative Assembly is also 5 years.

8. Collective Responsibility-

Council of Ministers is collectively

responsible to the Legislative Assembly. If Legislative Assembly passes no confidence motion against any Minister, or rejects any bill proposed by any Minister, the whole Council of Ministers has to resign in such a condition.

9. Salary and Allowances-

According to article 164 (5) of the Constitution that salaries of members of Legislative Assembly are decided by the State Legislatures.

Modus Operandi: Council of Ministers

The cabinet is the most important unit of Council of Ministers, decision regarding various important issues is only taken in the meetings of cabinet, usually held weekly. By the way, Chief Minister can convene its meeting whenever he needs. These meetings are presided over by the Chief Minister and by the senior most minister in the absence of Chief Minister. There is no quorum required for these meetings. There are two major rules for the proceedings of the cabinet: Collective responsibility and Secrecy. Generally all the decisions in the cabinet are taken unanimously. In the case of dissidence, decisions are taken on the basis of mutual consultation, and this decision is considered as a collective decision of all the ministers. Oath of secrecy is taken by each member of the Council of Ministers. The proceedings and decisions of cabinet are kept secret.

Powers and Functions of the Council of Ministers.

Although the work of Council of Ministers as mentioned in article 163 of the Constitution, is to help and advise the Governor only, but the actual situation is very opposite to it. All the powers given to Governor by the Constitution regarding to the Governance is practically used by the Council of Ministers only. Council of Ministers take all the important decisions related to the governance, and the Chief Minister briefs the Governor about all these decisions.

1. Setting the Rule of Governance-

The most important work of Council of

Ministers is to set a rule of governance whether it is Home Department, Education, health or Agriculture, the policy of governance is determined by the Council of Ministers only.

The Council of Ministers not only decides the policy but also transforms it into action.

2. Advice to Governor regarding the appointment on higher posts.

According to Constitution the Governor appoints the chairman and member of State Public Service Commission, Auditor General, and other high ranked officials. In practice all these appointments are made by the Governor on the advice of Council of Ministers only.

3. Representation of Governance in the Legislature-

The ministers answer the questions and criticism made by the members by remaining present and supporting government policies in the Assembly.

4. Deciding Legislation building programme

The Council of Ministers not only plays an important role in the field of legislation making but also decides the type and Order of the bills in which they are presented in the Legislature.

5. Budget Preparation-

Annual budget of the state is presented in Assembly by the finance minister before the beginning of fiscal year.

This budget is prepared according to the policy decided by Council of Ministers only. It is the responsibility of Council of Ministers only to get the budget passed.

Chief Minister-

The head of the Council of Ministers is known as Chief Minister. The Chief Minister is the real head of the executive of a state. Therefore in the administrative structure of the state, he receives almost the same position as Prime Minister in the centre.

Appointment of Chief Minister-

In article 164 of the Constitution, it has only

been said that the appointment of Chief Minister will be made by the Governor.

In practice, the leader of the party having majority in the Assembly is only appointed as Chief Minister by the Governor.

Powers and functions Chief Minister

The council of the ministers is the most important unit of state administration, and the Chief Minister is the head of it.

The powers and functions of Chief Minister can be studied in following terms:-

1. Forming Council of Ministers

The first and foremost work of Chief Minister is to build his Council of Ministers. After selecting the ministers Chief Minister gives the list to Governor, which is accepted by him. In the selection of ministers Chief Minister can act according to his prudence at a certain extent.

2. Division of work amongst the ministers-

Chief Minister allocates the portfolios to his colleagues i.e. Council of Ministers. Once after the formation of Council of Ministers and distribution of portfolios to its members, he can change the departments and the levels of ministers whenever it is required.

3. Working of Cabinet-

The Chief Minister himself convenes the meetings of cabinet and presides over them. The agenda of meeting is decided by the Chief Minister himself. All the proceedings of Council of Ministers is accomplished under the direction of chief minister.

4. Coordination amongst different departments in governance-

Chief Minister tries that all the departments of governance, in other words the Council of Ministers work as a unit. If there is any difference of opinion between two or more members of the Council of Ministers, then it is resolved as soon as possible by removing the mutual differences.

5. Link between the Council of Ministers and the Governor-

According to the Constitution it is the

responsibility of Chief Minister to establish contact between Council of Ministers and the Governor. He informs Governor about the decision taken in the cabinet and conveys Governor's opinion to the Council of Ministers.

6. Leader of Legislative Assembly-

On one side the Chief Minister is the leader of government, on the other hand he is the leader of Legislative Assembly too. As a leader of Legislative Assembly he receives an important position in the field of legislation making, and to a certain extent the legislation making work is completed according to his will. As a leader of Legislative Assembly he can advise the Governor to dissolve the Assembly.

HIGH COURT-

High court, Qualification of judges, Appointments and Powers-

India has an integrated Judiciary, where the Supreme Court stands at its highest level. The High court stands after the Supreme Court in the Judiciary. The High court is the topmost judicial institute at state level. According to article 215, each state can have a Higher Court. There may be only one High court for two or more states together. At first The High courts in India were established in Kolkata, Mumbai and Chennai in 1862 AD. Allahabad High court was established in 1866 AD. There are 24 High courts in India at present.

Formation of High court-

According to article 216, each High court will be constituted by Chief Justice and other such judges, to which The President considers essential to appoint from time to time. Thus the number of judges in the High court would be decided by the President.

Appointment of judges-

As per article 217(1) the Chief Judge of High court and other judges are appointed by the President. The President appoints Chief Justice of High court by taking the advice of Chief Justice of Supreme Court, Collegiums and the Governor. While for the other judges he takes the advice of Chief Justice of Supreme Court, Chief Judge of High court and the Governor.

Qualifications for a Judge-

As per article 217 (2) following qualifications are required for the appointment of a judge

1. He must be a citizen of India.
2. He has worked on a judicial post for at least 10 years in the state of India.
3. He has served as an advocate in a high court or two or more such courts regularly at least for 10 years.

Tenure

According to article 217 (1) the provisions for the tenure of a judge are as follows:

1. He will hold the post till 62 years of age.
2. A judge can be removed by the order of The President after passing of a proposal by both the houses of Parliament with two third majority.
3. The judge can submit his resignation by addressing it to the President.

Oath taken by the Judges-

As per article 219, the judge of a High court will take an oath before the Governor of the state or a person appointed by him.

Transfer of the Judges-

The transfer of the judges of High court is made by The President on the advice of the Chief Justice of Supreme Court (article 222).

Salary of Judges-

According to article 221 the salary of judges will be decided by the Parliament according to law. At present the Chief Justice gets ` 90000 and the other judges receive ` 80000 per month as salary.

Freedom of High court-

Following arrangements have been made for the freedom of High court

1. Special process for appointment,
2. Fixed tenure,
3. No further discussion on the conduct of judges would be made in the Parliament except impeachment.

4. After retiring as a High court judge, he will not practice in courts where he has worked as a permanent judge.
5. Separation from executive.

Domainal and powers of the High court–

The operational area and powers of high Court are as follows.

1. Original jurisdiction
2. Writ jurisdiction.
3. Appellate jurisdiction.
4. Court of records.
5. Administrative powers.
6. Judicial review.

I. Original Jurisdiction-

It implies the hearing of the cases by Supreme Court primarily. These areas are:-

1. Cases related to election of the members of Parliament and State Legislatures,
2. Cases regarding revenue collection, Admiralty, probate, marriage law, Company Law and the cases related to divorce etc.

II. Writ Jurisdiction—

Article 226 empowers High court to issue direction orders or writs in the nature of Habeas Corpus, mandamus, prohibition, quo warranto and certiorari. The Supreme Court can issue writs under article 32 only for Fundamental Rights, where the High court can issue writs for other matters too along with Fundamental Rights.

III Appellate Jurisdiction-

The appellate jurisdiction of High court can be divided into following parts.

* Civil appellate jurisdiction- Appeal can be made in the High court against the district court in the cases of income tax, patent, design, succession etc.

* Criminal jurisdiction when a criminal is awarded death sentence or an imprisonment for a term of 4 years, the appeal can be made against it in the High court.

Constitutional appellate jurisdiction–

If there is a case in which the question of interpretation of the Constitution arises, then the appeal can be made in the High court.

IV Court of record-

According to article 215, every High court would be considered as a court of records, and it holds the power of punishment for contempt of court. The judgements of High court will be kept protected as records and they will be considered as laws for the subordinate courts.

V The Administrative Rights-

The Administrative Rights of the High court are as follows-

The High court can summon the proceedings or judgements of its subordinate courts and can get them investigated, it is the duty of High court to notice that the subordinate court is not violating its Powers or limits, and is adhered to its duties according to the prescribed laws. It can move any case from a court to the other court for reconsideration and judgement.

VI Judicial Review-

The proceedings of state and Union Legislature and Executive can be declared valid or invalid by the High court. In the state the Legislature, Executive and the State Judiciary is known as State Government.

Important Points

1. Formation of Assembly
 - (i) Number of members (ii) Reservation of seats. (iii) Election System. (iv) Qualifications of members. (v) Tenure. (vi) Office bearers speaker and Deputy Speaker (vii) Powers and functions of the speaker
2. Formation of Legislative Council—
 - (i) Number of members.
 - (ii) Election and nominations.
 - (iii) Qualifications of the members.
 - (iv) Tenure-permanent house.

- (v) Office bearers- Chairman and Vice Chairman.
3. Powers and functions of the Legislative Council
- (i) Law making.
- (ii) Financial.
4. Powers and functions of Legislative Assembly
- (i) Legislative works.
- (ii) Financial .
- (iii) Administrative powers.
- (iv) Power of amendment in the Constitution.
- (v) Electoral power.
- State executive Governor, Chief Minister and the Council of Ministers.
5. The Governor- statutory head of the state.
Appointment - by the President.
Qualifications of the post and salary.
6. Powers and functions of Governor
1. Executive power.
 2. Legislative powers
 - 3 Miscellaneous powers.
7. **Formation of Council of Ministers**
1. Appointment of Chief Minister .
 2. Selection of ministers .
 3. Qualifications of the ministers.
 4. Distribution of portfolios to the ministers .
 5. Oath taken by ministers .
 6. Categories of ministers.
 7. Tenure of the Council.
 - 8 Collective responsibility..
 9. Salary and perks.
8. Powers and functions of Council of Ministers
- (i) Determining government policy
 - (ii) Advice to the Governor regarding the appointment on higher posts.
 - (iii) Governments representation in the

legislature .

(iv) Determining law making process.

(v) Budget Making.

Powers and functions of Chief Minister

- (I) Constitution of the council of minister.
- (ii) Distribution and change in the portfolios of ministers.
- (iii) Cabinet work.
- (iv) Coordination amongst different departments of government .
- (v) Establishing relations between Governor and the Council of Ministers.

Higher Judiciary

Appointment of judges by the President.

Qualifications for the judges

- (I) Citizen of India,
- (ii) Has held judicial post for 10 years and legal practice at least for 10 years,
- (iii) Tenure-Till 62 years of age.
- (iv) Oath taken- by the Governor.
- (v) Provisions for the freedom of High court.

Powers and functions

1. Original jurisdiction.
2. Writ jurisdiction.
3. Appellate jurisdiction.
4. Court of records.
5. Administrative powers.
6. Judicial review.

EXERCISE

Very Short Answer type Questions

1. For how long the number of members in Legislative Assembly will remain unchanged, despite the increase in population?
2. Which States of the Union of India have bicameral legislatures?
3. How many members of the Legislative

Council are nominated by the Governor?

4. List the designations of office bearers in Legislative Assembly and Council.
5. Which house of Legislature does not hold the power to pass a motion of no confidence against the Council of Ministers in states?
6. How many members of Legislative Council are elected by the electoral college of teachers?
7. On whose desire the Governor enjoys his post?
8. Where does the real executive power according to the Constitution lie?
9. What do you call the order issued by Governor in special circumstances at the time of prorogation of the Legislature?
10. Before assuming the office an oath of which intention has to be taken by the Chief Minister in front of Governor?
11. Under which article of the Constitution, the provision for the formation of Supreme Court has been made?
12. To whom does the Supreme Court judge address while submitting his resignation?

Short Answer Type Questions

1. Mention three such conditions due to which the membership of Legislative Assembly gets ended.
2. Explain briefly the functions of the Speaker of an assembly.
3. Imagine that you are the Speaker of a Legislative Assembly and the members want to remove you from your post, explain briefly the process they will have to follow for this purpose.
4. Which method has to be adopted in case of the establishment of Legislative Council in Rajasthan?
5. Which qualifications are needed for the post of Governor? Mention the discretionary powers of Governor.
6. How is the Council of Ministers formed in a

state?

7. Explain the modus operandi of the state Council of Ministers briefly.
8. Mention any two qualifications for the appointment of judges in High court.

Essay Type Questions:

1. Discuss the formation, rights and functions of Legislative Assembly.
2. Mention the formation, powers and functions of Legislative Council.
3. Explain the procedure of passing an ordinary bill in the state assembly.
4. Discuss the appointment and powers of Governor.
5. Describe the formation and powers of Council of Ministers in a state.
6. Discuss the role of Chief Minister in the state administration.
7. Explain the set up and jurisdiction of High court.