



Department of Distance Education

Punjabi University, Patiala

Class : B.A. I (Political Science)

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Medium : English

Lesson No.

- 1.1. Governor: Power, Position and Changing Role
- 1.2. State Legislature: Composition, Power and Position
- 1.3. State Council of Minister and Chief Minister
- 1.4. High Court

Department website : www.pbidde.org

(SEMESTER-IV)**LESSON NO. 1.1****AUTHOR : MRS. PARAMJIT KAUR****GOVERNOR****(Powers, Position and Changing Role)***1.1.1 Objectives of the Lesson**1.1.2 Introduction**1.1.3 Governor: Powers, Position and Changing role**1.1.4 Summary**1.1.5 Self-Check Exercise**1.1.6 Answers to questions for Self-Check Exercise***1.1.1 OBJECTIVES OF THE LESSON**

The main objective of this lesson is to make you aware of the nature of Chief-Executive in Indian states. After going through this lesson you will be able to understand :

- * What are the qualifications, method of appointment and removal of the Governor in an Indian State?
- * What are the powers and position of the Governor?
- * What is his changing role in Indian politics?

1.1.2 INTRODUCTION

In India, like the Union Executive, there are two parts of the State-Executive-Nominal Executive and Real Executive. Governor is the nominal executive and the Council of Ministers is the real executive in an Indian state. He is also the chief executive head of the state. In this lesson we will discuss: What are the powers given to him by the Constitution of India? What is his real position in the Parliamentary system of Government in India? His changing role in Indian politics will also be discussed in detail.

1.1.3 GOVERNOR

Article-153 (1) of the Constitution provides, “there shall be a Governor of each state. **Article 153** further states that nothing in this article shall prevent the appointment of the same person as Governor of two or more states.

Method of Appointment

Article-155 of the Indian Constitution says, “The Governor of the State shall be appointed by the President under his hand and seal.” In fact, his appointment is a political matter in which Prime Minister, Union Home Minister and the Chief Minister of the concerned state play an important role. The president gives only a formal approval to their choice.

Generally, it is that he does not belong to that state where he is being appointed. The advice of the Chief Minister is also taken. But both these Conventions are often violated. Parties in power at the centre play a major role in the appointment and removal of the Governors.

Qualifications of the Governors

According to **Article 157 and 158** of the Constitution the following are the necessary qualifications for the office of the Governors :

1. He should be the citizen of India.
 2. He should not be less than 35 years of age.
 3. He should not be the member of State Legislature or Union Parliament.
- If such a person is appointed the Governor, then, before assuming the office of the Governor he has to resign.

Apart from the above qualifications, in practice, favoured politicians, defeated politicians, senior Civil and military officials and persons with intellectual eminence are sought after to the office of Governor.

Tenure of Governor

Article 151 (1) of the Constitution says, "The Governor shall hold office during the pleasure of the President."

Under the Constitution the tenure of the Governor is fixed for five years from the date on which he takes charge of his office. The President has the power to remove the Governor before the expiry of his office. In practice, the parties in power at the centre often advise the President to appoint or remove the Governors as and when they suit to their political ends. On July 2, 2004, the UPA Government asked Babu Permanand, the Governor of Haryana, Vishnu Kant Shastri of U.P., Kailashpati Mishra of Gujrat and Kedar Nath Sahni of Goa to submit their resignations as they were appointed by the NDA government and then-ideology was not in consonance with the ideology of the UPA govt.

Article 156(3) states that on the expiry of the term of the office of Governor, the out-going Governor shall remain in office till the new Governor does not assume the office. The President of India can also transfer the Governors of the States from one state to another.

Salary and Allowances of Governor

According to a law passed in September 11, 2008 the Governor gets Rs. One lakh salary per month. He also gets free accommodation and many more facilities. The power to fix salary and allowances of the Governor is vested with the Parliament which cannot be decreased during his tenure as Governor.

The Governor also enjoys some special privileges which are as follows :

1. He is not answerable to any Court for exercising his powers as Governor.
2. During his tenure; no criminal suit can be filed against him.
3. To file a civil suit against him, one month's prior notice has to be given.

4. During his tenure he cannot be arrested.

Oath : The Chief justice of the concerned High Court and in his absence the next senior judge administers an oath to the Governor before he assumes his office.

1.1.3 POWERS OF GOVERNOR, POSITION AND CHANGING ROLE

The Governor of a state enjoys the following powers :

Executive Powers :

1. Under Article 154 (1) all executive powers are vested in him to run the administration of the state. His power extends to all those subjects in which the State Legislature is empowered to make laws.
2. He appoints the Chief Minister and with his advice he makes the appointment of Council of Ministers. In fact the list of ministers is prepared by the Chief Minister, he simply gives approval.
3. He administers the oath of office and secrecy to the ministers.
4. The Governor can also remove any Minister from his office on the recommendation of the Chief Minister.
5. The Governor makes rules and regulations for the distribution of Portfolios among the ministers though the distribution is actually done by the Chief Minister.
6. The Governor can take any information from the Ministers.
7. The Governor can ask the Council of ministers to discuss any such matter upon which any minister has taken decision in his individual capacity.
8. He Governor makes the appointment of the Advocate General and the members of the State Public Service Commission.
9. The Governors of Assam, Madhya Pradesh and Orissa have the special responsibility to look after the interests of the Backward Tribes and Scheduled Castes living in these areas.
10. The Governor sends his report to the President of India about the failure of Constitutional machinery in the state and recommends him for the imposition of President's rule. If President's rule is imposed in any state,- it is the Governor who runs the administration of the state on behalf of the President.

Legislative Powers

As a part of the State legislature, the Governor makes use of the following Legislative powers -

1. The Governor summons and prorogues the session of the State Legislature keeping in mind that there is not a gap of more than six months between the two sessions of the Legislature. He can also convene a joint session of both Houses of the State Legislature.

2. The inaugural Address of the Governor prepared by the government is delivered by the Governor himself in the first session of the State Legislature after its elections and in the first session of a new year.
3. He can address either house or both the houses assembled together. He can also ask the members to remain present in the house for this purpose.
4. He can send messages to the State Legislature for consideration. The Legislature is bound to consider them.
5. He enjoys veto power. The bills passed by the state Legislature are subject to his assent. He may give his assent, withhold or return a bill to the legislature for reconsideration. It is provided that he cannot withhold his assent on a non-money bill after it is reconsidered by the Legislature. The Legislature may or may not accept his recommendation at the time of reconsideration. Thus he enjoys 'delaying power'.
6. The Governor can reserve some bills for the consideration of the President which are declared essential by the act of Parliament covering a matter of concurrent list or any other bill likely to create a conflict with the Union govt.
7. He can also issue Ordinances- The Ordinance issued by the Governor shall be laid before the Legislative Assembly of the State or the Legislative Council for approval or it shall cease to operate at the expiry of six weeks from the reassembly of the Legislature. The Legislature can disapprove the Ordinance before the expiry of six weeks.
8. He may also nominate one member of Anglo-Indian Community in a Legislative Assembly if it does not have adequate representation in the popular chamber.
9. He nominates about 1/6 members of Upper Chamber from amongst the persons famous in the fields of arts, science, literature, social service and co-operative movements.
10. If the offices of Speaker and Deputy Speaker in the Lower House or of the Chairman and Deputy Chairman in the Upper House fall vacant due to any reason, he can ask any member of the concerned House to preside over the meetings.
11. He lays before the Legislature the annual reports for Consideration submitted by various agencies like State Public Service Commission and Auditor-General to him.

Financial powers

The financial powers of the Governors are as follows :

1. A money bill cannot be introduced in the State legislature without his prior approval.

2. Before the commencement of every financial year he causes to be laid by his minister the annual financial statement (Finance Bill) before the Legislature. The supplementary and additional demands can be placed before the Legislature only with the prior approval of the State Legislature.
3. The Contingency Fund of the State is at his disposal and he can make advances out of it to meet the unforeseen expenditures pending its authorization by the State Legislature.

Judicial Powers

The Governor enjoys some Judicial Powers :

1. He decides matters relating to the appointment, posting and promotion of district judges and other judicial matters.
2. He is consulted by the President at the time of appointment of the Judges of the concerned.
3. He has the power of granting pardon to persons convicted by the courts of law or remitting or commuting their sentence. It is, however, required that the offence must come under a law relating to matters lying within the executive competence of the State Government.

Miscellaneous Powers

1. He can make regulations for the protection of the interests of minorities.
2. The Governor settles disputes between Regional Committees and the State Governments.

Discretionary Powers of the Governors

The Governor enjoys some discretionary powers also :

1. If no party is in a position to enjoy majority in a Legislative Assembly, the Governor uses his discretion to appoint the Chief Minister. But he has to keep in mind that the person invited by him to form the Govt. should be capable of proving majority support on the floor of the House within a stipulated time as per Constitution rules.
2. The Governor sees that the administration is carried on in accordance with the provisions of the Constitution. In case he finds that the Constitution machinery has failed, he may send his report to the President on the basis of which the President declares President's rule.
3. Generally the Governor dissolves Legislative Assembly on the advice of the Chief Minister but sometimes he has to take this decision on his own.
4. Many times the Council of Ministers wants to remain in office even after losing the confidence. In such situations, the Governor takes decision to dismiss the Council of Ministers.

Position of the Governor

The Governor is the constitutional head of the state. His position is same as of the President at the Centre. In a parliamentary form of the Government the executive head is always a nominal head. The Governor is the nominal executive head of the state while the real powers are enjoyed by the Council of Ministers. He generally acts on the advice of the Council of Ministers. In the words of H.V. Kamath, "The Governor is more like a puppet controlled by the Chief Minister on the one hand and President that is virtually to say Prime Minister, on the other hand." If in the Centre and the state there is Govt. of the same political party, then the Chief Minister is more close to the central Govt. If the situation is such that the ruling parties in the Centre and at the state level are opponents then the position of the Governor is very critical.

Changing Role of Governor

The office of the Governor has to play different roles in different situations. He is supposed to be the agent of Union Govt. in the state. When there is political stability in the state, he becomes constitutional head but when there is political instability then he is to play an active role. He is a link between the Centre and the state. He also plays the role of the Guardian of the Constitution and sees that the provisions of the Constitution are not violated. 'In case he feels that the state Govt. is not working constitutionally, he can give a report to the Centre leading to the imposition of president's rule in the state.' Though, the president is not bound by the advice of the Governor but generally it is accepted. In case of imposition of President's rule, the entire administration of the state is carried out by the Governor.

In formation of the Govt, in the State there is no problem for the Governor to invite the leader of the majority party to form the Govt, but in case no party is in a position to prove the majority then the Governor uses his discretion. In states there is an era of coalition politics. Many times political parties form the alliances and break them frequently. Then, it becomes difficult for the Governor to be confident of the position of the parties capable of showing the majority on the floor of the house.

The Governor sends his report to the Centre about the failure of the Constitutional machinery in the state on the basis of which President rule is imposed in the state. In case there are different parties ruling in the states and the Centre, the Central Govt. can put pressure on the Governor to send the report of its liking. Under such circumstances the Governor should not work under the pressure of the Govt. in the Centre rather he should take his own decision and give correct report.

The Governor has the power to reserve certain bills for the approval of the President. In this case also some Governors play partisan role. They should rise

above party politics and follow the Constitutional provisions

Except in his discretionary powers the Governor is supposed to act according to the advice of the Council of Ministers. In an era of coalition politics in recent years the role of Governors has become very much controversial. Party politics have changed their constitutional obligations. The office of the Governor is losing its dignity in the present day petty politics of political parties.

The following points show the reasons of decline of the office of the governors :

1. The Governors have to please two masters, Prime Minister in the Centre and the Chief Minister in the state. His dual responsibility becomes a headache in case there are opposition parties ruling in the Centre and the concerned state.
2. Generally, the defeated senior politicians of parties are able to reach to the office of the Governor. They do not play an active role. Raj Bhawans are treated by them as rest houses.
3. It is true that the active politicians become the Governors, They look up to the party in power at the Centre for directions and act accordingly.
4. If Governors fail to come up to the expectations of the ruling party, then they are removed or transferred. This trend of their arbitrary removal has lowered the prestige of the office of the Governor.
5. Sometimes the Governors forget that they are only the constitutional heads. It is seen that they criticize their own Govt. in public.

In practice when the Govt. is changed at the Centre, the ruling parties often remove or transfer the Governors. The UPA Govt, has made 13 new Governors within one year of its coming to power. Babu Permanand of Haryana , Kailash Pati Mishra of Gujrat, Vishnu Kant Shastri of Utter Pradesh and Kedar nath Sahni of Goa were the Governors who were removed just on the plea that their ideology does not match with the ideology of the Govt.

The Governor has to play a very important role in Indian politics, its office should be strengthened. The recommendations of Sarkaria Commission should be implemented. Only competent persons should be appointed as Governors. The Governors should rise above party politics

1.1.4 SUMMARY

The Executive Head of the state is the Governor in whom the executive authority is vested. He is appointed by the President. The same person may be appointed as governor for more two or more states. The person to be appointed as Governor should not be less than 35 years of age. He should not hold any office of profit. He should not be a member of either House of the State Legislature. His term of office is five years but he remains in office during the pleasure of the President. Before assuming his office he takes an oath before the Chief Justice of

the concerned High Court.

He has some Executive Powers such as the power to appoint the Chief Minister, Council of Ministers and other high offices of State and to frame rules for convenient transaction of business of Government. He also has Legislative powers like power to summon State Legislature, to dissolve Legislative Assembly, to give assent to the bills and to promulgate Ordinances. His Financial Powers include such as to cause the Budget and other money bills to be laid before the Assembly. Judicial powers empower him to grant pardons and to commute the sentence of any person. Using his Discretionary Powers he can appoint the Chief Minister of his own choice when no party gets the majority in the Legislative Assembly. He can reserve certain bills for the assent of the President. He is constitutional Head of the State but when he gives report of the failure of constitutional machinery in a state and subsequently President Rule is imposed in the state then he becomes the real ruler of the State.

In recent years, the role of Governors has become controversial. Due to coalition politics at state level also they play political role. Ruling parties *try* to make them puppets in their hands. President Abdul Kalam in an All India Governors conference held recently has called upon them to adhere to the principle of Dharma (morality) and play an impartial role.

1.1.5 SELF-CHECK EXERCISE

1. What is the method of appointment of Governor ?
2. Write down necessary qualifications for the office of the Governor ?
3. What is the tenure of the Governor ?
4. What are the special privileges of the Governor ?
5. Write any four Executive powers of the Governor ?
6. Write any four Legislative powers of the Governor ?
7. Write down Governor's power to issue Ordinance ?
8. What are Financial Powers of the Governors ?
9. What are the Discretionary Powers of the Governor ?
10. Explain in brief the changing role of Governor in Indian politics ?
11. Write a detailed note on powers and position of the Governor with special reference to his changing role in Indian politics ?

1.1.6 ANSWERS TO SELF-CHECK EXERCISE

1. Under Article-155 of the Indian Constitution the Governor of the state is to be appointed by the President under his hand and seal. In fact his appointment is a political matter in which Prime Minister, Union Home Minister and the Chief Minister of the concerned state play an important role. The president gives only a formal approval to their choice.
2. The following are the necessary qualifications for the office of the Governors:

- i. He should be the citizen of India.
- ii. He should not be less than 35 years of age.
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Apart from the above qualifications, in practice, favoured politicians, defeated politicians, senior Civil and military officials and persons with intellectual eminence are sought after to the office of Governor.

3. Article 151 (1) of the Constitution says, "The Governor shall hold office during the pleasure of the President."

Under the Constitution the tenure of the Governor is fixed for five years from the date on which he takes charge of his office. The President has the power to remove the Governor before the expiry of his office. In practice, the party in power at the centre often advises the President to appoint or remove the Governors as and when they suit to its political ends. On July 2, 2004, the UPA Government asked Babu Permanand, the Governor of Haryana, Vishnu Kant Shastri of U.P., Kailashpati Mishra of Gujrat and Kedar Nath Sahni of Goa to submit their resignations as they were appointed by the NDA government and their ideology was not in consonance with the ideology of the UPA govt.

Article 156(3) states that on the expiry of the term of the office of Governor, the out-going Governor shall remain in office till the new Governor does not assume the office. The President of India can also transfer the Governors of the States from one state to another.

4. The Governor enjoys some special privileges which are as follows:
 1. He is not answerable to any Court for exercising his powers as Governor.
 2. During his tenure, no criminal suit can be filed against him.
 3. To file a civil suit against him, one month's prior notice has to be given.
 4. During his tenure he cannot be arrested.
5. The Governor has following executive Powers :
 1. He appoints the Chief Minister and with his advice he makes the appointment of Council of Ministers. In fact the list of ministers is prepared by the Chief Minister, he simply gives approval.
 2. He administers the oath of office and secrecy to the ministers.
 3. The Governor can also remove any Minister from his office on the recommendation of the Chief Minister.
 4. The Governor makes rules and regulations for the distribution of Portfolios among the ministers though the distribution is actually

done by the Chief Minister.

6. The Governor makes use of the following Legislative powers :
 1. The Governor summons and prorogues the session of the State Legislature keeping in mind that there is not a gap of more than six months between the two sessions of the Legislature. He can also convene a joint session of both Houses of the State Legislature.
 2. The inaugural Address of the Governor prepared by the government is delivered by the Governor himself in the first session of the State Legislature after its elections and in the first session of a new year.
 3. He can address either house or both the houses assembled together. He can also ask the members to remain present in the house for this purpose.
 4. He can send messages to the State Legislature for consideration. The Legislature is bound to consider them.
7. When the State Legislature is not in its session and there arises the need of passing an imminent legislation, the Governor can also issue Ordinances. The Ordinance issued by the Governor shall be laid before the Legislative Assembly of the State or the Legislative Council for approval or it shall cease to operate at the expiry of six weeks from the reassembly of the Legislature. The Legislature can disapprove the Ordinance before the expiry of six weeks.
8. The financial powers of the Governors are as follows:
 1. A money bill cannot be introduced in the State legislature without his prior approval.
 2. Before the commencement of every financial year he causes to be laid by his minister the annual financial statement (Finance Bill) before the Legislature. The supplementary and additional demands can be placed before the Legislature only with the prior approval of the State Legislature.
 4. The Contingency Fund of India is at his disposal and he can make advances out of it to meet the unforeseen expenditures pending its authorization by the State Legislature.
9. The Governor enjoys the following discretionary powers also.
 1. If no party is in a position to enjoy majority in a Legislative Assembly, the Governor uses his discretion to appoint the Chief Minister. But he has to keep in mind that the person invited by him to form the Govt. should be capable of proving majority support on the floor of the House within a stipulated time.

2. The Governor sees that the administration is carried on in accordance with the provisions of the Constitution. In case he finds that the Constitution machinery has failed, he may send his report to the President on the basis of which the President declares President's rule.
 3. Generally the Governor dissolves Legislative Assembly on the advice of the Chief Minister but sometimes he has to take this decision on his own.
 4. Many times the Council of Ministers wants to remain in office even after losing the confidence. In such situations, the Governor takes decision to dismiss the Council of Ministers.
10. The office of the Governor has to play different roles in different situations. He is supposed to be the agent of Union Govt. in the state. When there is political stability in the state, he becomes constitutional head but when there is political instability then he is to play an active role. In recent years the role of Governors has become controversial. Due to coalition politics at state level also they play political role. Ruling parties try to make them puppets in their hands. Party politics have changed their constitutional obligations, he Governor sends his report to the Centre about the failure of the Constitutional machinery in the state on the basis of which President rule is imposed in the state. In case there are different parties ruling in the states and the Centre, the Central Govt. can put pressure on the Governor to send the report of its liking. The office of the Governor is losing its dignity in the present day petty politics of political parties.
11. (Give a brief description of the whole lesson)

* This lesson has been written with the financial assistance of DEC

(SEMESTER-IV)**LESSON NO. 1.2****AUTHOR : PROF. INDERJIT SINGH SETHI****STATE LEGISLATURE
(Composition, Powers and Role)**

- 1.2.1 Objectives of the lesson*
- 1.2.2 Introduction*
- 1.2.3 The Legislative Assembly*
 - 1.2.3.1 Composition of the Assembly*
 - 1.2.3.2 Powers of the Legislative Assembly*
- 1.2.4 Legislative Council*
 - 1.2.4.1. Composition of the Council*
 - 1.2.4.2. Powers of the Council*
- 1.2.5 Self Check Exercise*

1.2.1 OBJECTIVES OF THE LESSON

The legislature of a State can be unicameral or bicameral. Provisions for the State legislature are similar to those for constituting the union legislature. In this lesson following aspects have been dealt in.

1. Unicameral and Bicameral Legislatures.
2. Abolition and Creation of Legislative Councils.
3. The Legislative Assembly.
 - (a) Composition
 - (b) Reservation
 - (c) Tenure
 - (d) Qualifications for Membership
 - (e) Disqualifications for Membership
 - (f) Privileges
 - (g) Salary
 - (h) Presiding Officers
 - (i) Resignation
 - (j) Sessions
 - (k) Address by the Governor
 - (l) Powers of the Assembly
 - (i) Legislative powers
 - (ii) Financial powers
 - (iii) Control over the executive
 - (iv) Other powers
 - (v) Limitation on powers and Legislative procedure.

4. The Legislative Council
 - (a) Composition
 - (b) Tenure
 - (c) Qualifications and disqualifications
 - (d) Presiding Officer and Powers.
5. Questions, Short answer type questions and self-check exercise.

1.2.2 INTRODUCTION

The Legislature of a State means the Governor and one or two Houses of State Legislature as the case may be. The Two Houses are known respectively as the Legislative Council or the *Vidhan Parishad* which is also called the Upper House; and the Legislative Assembly or the *Vidhan Sabha* which is also called the Lower House. There are 28 States in India but all these States do not have bicameral Legislatures. It was originally provided that the legislatures of the more populous States will be bicameral. It was provided that Andhra Pradesh, Bihar, Madhya Pradesh, Tamil Nadu, Maharashtra, Karnataka, Punjab, Uttar Pradesh and West Bengal shall have two houses and the remaining states will be unicameral. Some of the States realised that the Legislative Council was an unnecessary adjunct. Subsequently, on the initiative taken by the concerned state. Parliament by law abolished the upper house. At present only the states of Bihar, Maharashtra, Karnataka, Uttar Pradesh and J & K have adopted bicameral legislature.

Abolition and Creation of Legislative Councils: Article 169 of the Constitution empowers the Parliament to abolish the Legislative Council in a State where this House exists, or to create this chamber where it does not exist, provided the Legislative Assembly of the concerned State passes a resolution to that effect by atleast two-thirds majority of the members present and voting. The mechanism of abolition or creation of the Legislative Council is simple and do not require an amendment of the Constitution in the technical sense. The State of Andhra Pradesh created the Council in 1957 and got it abolished in 1985. West Bengal and Punjab abolished their upper chamber in 1969.

1.2.3 THE LEGISLATIVE ASSEMBLY

2.3.1 Composition : Members of the Legislative Assembly, commonly known as MLAs are elected on the basis of universal adult franchise, joint electorate, single member territorial constituencies, secret ballot and direct election. The maximum number prescribed by Article 170 is 500 and minimum is 60. The actual number of seats in the State Assemblies are to be fixed by an Act of the Parliament on the basis of the population of each state ascertained by the recent census.

After the creation of some smaller states the minimum number has been reduced in respect of a particular state. In case of Sikkim, Arunachal Pradesh and Goa the minimum is 30; for Mizoram it is 40. At present the smallest Assembly is

that of Sikkim Consisting of 32 members and largest is that of Uttar Pradesh having 403 members.

Reservation: Under Article 332 of the Constitution some seats are reserved for Scheduled Castes and Scheduled Tribes on the basis of population. Though reservation for majority is unprecedented, yet, in the States of Arunachal Pradesh, Meghalaya, Mizoram and Nagaland where Scheduled Tribes are in overwhelming majority, the Constitution reserves seats for them.

A reservation of seats has also to be made with regard to the Anglo-Indians by the Governor, if he is of the opinion that the community is not adequately represented in the Assembly. The period of reservation was originally to be ten years but at present it is to last till the year 2010.

Tenure : *The* duration of every Assembly is 5 years. It may be dissolved earlier by the Governor. During the proclamation of emergency, under Article 352, however, the Parliament may by law extend the life of the Legislative Assembly by one year at a time. But this period cannot go beyond 6 months from the date the proclamation has ceased to operate.

Sometimes, the Central Government has taken action under Art. 356 and dissolved the Assembly. On 3 occasions Assemblies have been dissolved en masse by recourse to Art 356, for example, in 1977 the Janata Government dissolved 9 Assemblies ruled by the Congress and in 1980 when the Congress gained power at the centre it retaliated and dissolved all the nine Assemblies where it was not in power. In 1992 four Assemblies where the Bhartiya Janata Party was in majority were dissolved.

Qualifications For Membership

The membership of an Assembly is open to everybody who is a registered voter and who possesses the following qualifications.

- (i) He is a citizen of India;
- (ii) Is at least 25 years of age;
- (iii) Possesses such other qualifications as may from time to time be prescribed by the Parliament, and
- (iv) Is a member of a Scheduled Caste or of a Scheduled Tribe where he is contesting a reserved seat belonging to them.

Disqualification for Membership

A person is disqualified from becoming the member of either Legislative Council or Legislative Assembly.

- (i) If he holds an office of profit under the Government of India or under a State Government;
- (ii) If he is of an unsound mind;
- (iii) If he is an undischarged insolvent;
- (iv) If he is not a citizen of India or has voluntarily acquired the citizenship

of a foreign state or is under allegiance or adherence to a foreign state; and

(v) If he is disqualified under a law made by the Parliament.

The Parliament has the power to make law laying down conditions in which a person shall become disqualified, e.g. the Representation of the People Act, 1951 has laid down some grounds for disqualification, such as, conviction by a court, guilty of corrupt practice in an election, being director in a Corporation in which the Government has a financial interest.

As regards these matters the decision of the Governor shall be final but he has to act upon the advice of the Election Commission.

Privileges

The members of the State Legislature enjoy certain privileges in order to discharge their duties efficiently and effectively. They enjoy freedom of speech in the State Legislative Assembly subject to the provisions of the Constitution and the rules and standing orders regulating the procedure of the Legislature. They are also entitled to the same privileges that are enjoyed by members of the Parliament.

Salary

The members of Assembly receive such salaries and allowances as may be determined from time to time by the State Legislature, by law.

Presiding Officers

In the first meeting of the first session, the members of the Assembly choose a Speaker and a Deputy Speaker from amongst themselves. This meeting is presided over by the senior most member, known as *protem* speaker.

The speaker presides over the meetings of the House and in his absence all his functions are performed by the Deputy Speaker. The Speaker maintains order and decorum in the House. He can suspend a member for disorderly behaviour or he may ask him to withdraw from the House.

Basically there is no difference between the functions of the speaker of the Lok Sabha and the speaker of the State Legislative Assembly.

Resignation

A member may resign his seat by writing under his hand addressed to the Speaker (in case of the Assembly) or the Chairman (in case of the Council). On his resignation being accepted the seat falls vacant. In 1974, Art. 190 was amended to provide that on receipt of a resignation the Speaker or the Chairman must make enquiry to satisfy himself that the resignation is voluntary and not given under coercion, and secondly the resignation is genuine and not forged. Unless he is satisfied he will not accept the resignation.

Sessions

The Governor summons a House of Legislature to meet at such time and

place as he thinks fit. Six months is the maximum period which may intervene between the last sitting of a House and the date of its first sitting in the next session. In other words the Assembly must meet at least twice a year.

The House may be prorogued by the Governor.

Address by the Governor

Under Art. 176 the Governor is required to address the Legislature on two occasions,

- (a) At the commencement of the first session after each general election, and
- (b) At the commencement of the first session of each year.

The Governor has the right to address both Houses assembled together if there are two or the Assembly if there is only one House and for that purpose may require the attendance of members.

The Governor may send messages to the Houses or House of Legislature in respect of a Bill pending in the Legislature or otherwise. On receipt of the message it becomes the duty of the House to consider the message as soon as it is possible.

These powers are similar to those vested in the President in relation to the Parliament.

16.3.2 Powers of the Assembly

The powers of the Legislative Assembly may be classified as follows :

Legislative Powers

With regard to the legislative powers, the State Legislature has unfettered powers to pass enactments on any of the subjects mentioned in the State List. The State List consists of 66 subjects. It can also pass laws on the subjects included in the Concurrent List (47 subjects). But in the case of clash between a Union Law and a State Law on a concurrent subject, the former will prevail.

Financial Powers

The Legislative Assembly has complete control over the public purse. Annual statement of income and expenditure has to be placed before the legislature. The proposals for taxation are brought before it in the shape of Finance Bills and demands for grant are made before it. The legislature may approve the proposals or reject them; it may also pass, reject or reduce a demand for grant. However, certain items in the Budget are non-votable though discussion can take place on those items. These items include the emoluments of the Governor, salary of High Court Judges, and members of the state Public Service Commission etc.

Control Over the Executive

The Council of Ministers is individually and collectively responsible to the Legislative Assembly, and work under the supervision and control of the Legislature. They continue in office till they enjoy the confidence of the Assembly

otherwise they can be removed from the office even before the expiry of their normal tenure of five years by a vote of no-confidence.

Their activities are checked by the members through questions and supplementary questions, discussions, debates and adjournment motions. And they have to resign if the State Legislative Assembly has passed an amendment to the Governor's address, a cut motion with regard to the budget or a vote of censure or of no confidence.

However, it may be pointed out that in the parliamentary system of government as it is followed at the State Level, a Chief Minister with an absolute majority and well-organised and disciplined followers can dictate terms to the Legislative Assembly. Whatever the executive wants it can get passed by the Legislature and thus the control of the Legislature over the executive becomes ineffective.

Other Powers

The members of the Legislative Assembly take part in the election of the President and members of Rajya Sabha.

Although, the State Legislature in India have no power to initiate an amendment to the Indian Constitution, but in the amendment of the Constitution concerning certain provisions, such as the election of the President, and certain parliamentary amendments such as those related to the executive powers of the Union and the States, the Supreme Court and the High Courts, distribution of Legislative powers between the Union and the States and the representation of States in the Parliament, and the procedure of amendment itself; all these amendments have to be ratified by atleast half of the State Legislatures in order to be valid.

Limitations

However, there are certain limitations from which the powers of the State Legislatures suffer.

- (i) While criticising the Ministers or discussing and debating a matter, the members of the State Legislature must maintain certain decorum and avoid personal criticism and obscene language;
- (ii) When a proclamation of emergency is in operation the Parliament can legislate on matters relating to the State list;
- (iii) When there is a failure of the constitutional machinery of the State, the President may, by a proclamation, vest the legislative powers of the State in Union Parliament;
- (iv) With respect to the Concurrent list, if a state law comes in conflict with the union law, the state law should be void to the extent of its repugnancy;
- (v) Some bills require the previous sanction of the President for their introduction in the State Legislature, e.g., a bill seeking to impose

restrictions on the freedom of trade, commerce or intercourse within or outside of the State (Art. 304);

- (vi) The Governor can reserve certain bills for the consideration of the President and they become valid only after receiving the assent of the President;
- (vii) If the Rajya Sabha passes a resolution supported by two-thirds of members present and voting that the Union Parliament should make laws on certain matters in the State List, then Parliament acquires the power;
- (viii) The State Legislature can not vote on those items of expenditure which are charged upon the State Consolidated Fund;
- (ix) Such a Parliamentary enactment can also be made if the Legislatures of two or more states desire it themselves; and
- (x) No bill passed by the State Legislature can become law unless finally consented to by the Governor who can return a non-money bill for reconsideration but must give his assent if the same bill is passed by the Legislature for the second time.

Legislative Procedure

The Legislative procedure with regard to the non-money bills in State Legislature whether it be a Private Bill or a Government Bill is the same as in the Parliament.

In some of the States the legislature is unicameral and hence, all bills including Money Bills are originated in the Legislative Assembly.

1.2.4 LEGISLATIVE COUNCIL

Composition of the Legislative Council

Article 171 fixes 40 as the minimum strength of a Legislative Council. The maximum number is fixed with reference to the strength of the Assembly. The total membership of the Council shall not exceed one-third of the total number of members of the Legislative Assembly of the State. The composition of the Legislative Council may be described thus

- (a) one-third of the total members are elected by electorates consisting of members of local bodies e.g., municipalities, District Boards etc.
- (b) 1/12 shall be elected from registered graduates of 3 years standing living in the State.
- (c) 1/12 shall be elected from the teachers constituency. Teacher who are engaged in teaching for three years in an educational institution within the State (not lower in standard than a secondary school) are eligible to be electors.
- (d) 1/3 shall be elected by the elected members of the legislative assembly of the State from amongst persons who are not members of the Assembly.

- (e) the remaining 1/6 shall be nominated by the Governor from persons having special knowledge or practical experience in respect of such matters as literature, science, art, cooperative movement and social service.

The Parliament has the power under Art. 171 to enact a law providing for the composition of the Legislative Council. It has not done so. When such a law is adopted the present provisions may be replaced or modified.

Tenure : Legislative Council is not subject to dissolution. It is a permanent house. 1/3rd of its members retire every two years. So a member continues as such for six years. If a member is elected to fill a casual vacancy caused by the resignation or death of a member he continues as a member for the remaining period and not for 6 years.

Qualifications and Disqualifications

Qualifications and disqualifications for membership of Legislative Council are the same as that of being a member of Legislative Assembly except that in the case of a seat in the Legislative Council a person should not be less than 30 years of age.

Presiding Officer

The Chairman presides over the meetings of the Council. In the absence of the Chairman all his powers are exercised by the Vice-Chairman who is elected by and from among the members of the Legislative council.

1.2.4.2 Powers of Legislative Council

The Legislative Council is a weak partner of the Legislative Assembly and is both the second and the secondary chamber. It can delay a non-money bill for three or four months and a Money Bill for only 14 days. It has no power to cancel a Bill, thus, it exercises ineffective dilatory power.

Money Bills must originate in the Legislative Assembly and if a Money Bill is not passed by the Council within 14 days of the date of receipt of such a Bill, it is sent to the Governor for approval. Thus, non-money Bill as well as Money Bills can become Acts even without the approval of the Legislative Council. This has relegated the Council to the background. In effect the Legislative Council can only make amendments to a Bill which are acceptable to the Legislative Assembly.

The Legislative Council has no Control over the Council of Ministers because they are responsible only to the Legislative Assembly. The Ministers are not bound to resign even if a vote of no-confidence is passed against the Ministry. The Council, however, has the power to put questions and the Ministers in their own interest should give satisfactory answers.

The examination of the Legislative functions of the Legislative Assembly and the Council reveal that the council has been conferred a much lesser degree of powers as compared to the Rajya Sabha.

At one time it was thought that persons of high standing, man of learning, probity of character will adorn the Council. But experience of the first five decades shows that calibre and competence of the members of a Legislative Council is not a shade better than the members of a Legislative Assembly. The States of Andhra Pradesh, Tamil Nadu, Punjab and West Bengal have abolished the councils and all this indicates that they are considered it as surplus and not so useful organisation.

1.2.5 SELF-CHECK EXERCISE

Say Yes or No

1. All the states of the Union of India have bicameral legislature.
2. The Legislative Council can be abolished by the Union Parliament arbitrarily.
3. The smallest Assembly is that of Sikkim.
4. The duration of State Assembly is 5 years.
5. The Legislative Council is a permanent House.
6. Two sessions of a Legislature are to be held every year.
7. In case of clash between the Union Law and a State Law on a Concurrent subject, the latter will prevail.
8. One-third of members of Legislative Assembly retire every two years.

Yes: 3, 4, 5, 6

No - 1, 2, 7, 8

Questions

1. Discuss the composition and functions of the State Legislature.
2. Explain the relations between the Legislative Assembly and the Legislative Council.

Short-answer type questions

1. Qualifications to be a member of Legislative Assembly.
2. Qualifications to be a member of State Legislative Council.
3. Legislative Powers of Legislative Assembly.
4. Financial Powers of Legislative Council.
5. Executive functions of Legislative Assembly.
6. Constitutional Functions of Legislative Assembly.
7. How can Legislative Council be abolished?
8. How is the Speaker of Legislative Assembly elected?
9. When are the sessions of Legislative Assembly convened?
10. Veto Power.

CHIEF MINISTER AND HIS COUNCIL OF MINISTERS

One of the essential features of the Indian constitution is that the Parliamentary form of government has been set up both at the Centre and in the States. The President is the constitutional head of the Union Government but real, working head of the Indian Republic is the Prime Minister. Similarly we have a Governor at the top of the State executive with a Chief Minister who is endowed with real powers of administration. Owing to this, the Prime Minister at Centre and the Chief Minister at the State level have their Council of ministers to aid and advise the respective constitutional heads and to remain collectively responsible to the popular house of the respective legislatures. A deeper study in this direction, however, re-popular an astounding fact that while the Union Council of Ministers headed by the Prime Minister exercises effective authority to a very great extent, the scope of the authority of the state Council of Ministers has been much circumscribed not only due to the fact of limited powers, attenuated area of authority given to the component units of the Indian federation but also to the no less effective attempt has been made to study the office of the real executive and his powers and position in the context of actual political developments that have occurred over the recent years wherein lies the story of the emerging nature and role of the office of Chief Minister.

Appointment and Removal

Article 163 provides that there shall be a Council of Ministers with Chief Minister as the head to aid and advise the Governor in the exercise of his functions barring those which fall in his discretion. If any question arises whether any matter is or is not a matter in respect of which the Governor is by or under this constitution required to act in his discretion, the decision of the Governor taken in his discretion shall be final and the validity of anything done by him shall not be called in question on the ground that he ought to have acted in his discretion or not. Article 164 says that the Chief Minister shall be appointed by the Governor and other ministers shall be appointed by the Governor on the advice of the Chief Minister and they shall hold office during the pleasure.

It is clear that the matter relating to the appointment of the Chief Minister lies within the executive authority of the Governor and his action in this regard cannot be challenged in the court of law. It is for this reason that a writ petition filed in the Calcutta High Court challenge in the action of Governor (Dharam Vira) who had appointed Dr. P.C. Ghosh as the Chief Minister dismissing Ajoy Mukerji's

government in November, 1967 was set aside. Likewise, the High Court of Allahabad (and later on the Supreme Court in an appeal) rejected a writ petition challenging the appointment of T.N. Singh as the Chief Minister of Uttar Pradesh in October, 1970. The court did not agree with the plea of the petitioner that Singh's appointment was invalid in view of the fact that he was not a member of State Legislature. It is, therefore, clear that the power of the Governor in regard to the appointment or dismissal of the Chief Minister has a discretionary character.

However, the power of the governor in regard to the appointment of his Chief Minister is both limited as well as unlimited depending upon the nature of the political situation. It is limited when a single party has absolute majority in the Vidhan Sabha that makes it binding on the part of the Governor to call its leader to form the government. Thus, the Governor of Madras invited C. Annadurai to form his government as the Dravida Munetra Kzhagam emerged triumphant in the elections of 1967 or for that matter in all other states where one party emerges as the party enjoying clear majority. The Governor has no other option but to invite the leader of the majority party to form the government. But the Governor has virtually unlimited authority in a matter relating to the appointment of his Chief Minister in case of the party position in the Vidhan Sabha is fluid, in Haryana the appointment of Bhajan Lal as the Chief Minister in 1982 by the Governor G.D. Tapase invited criticism from all corners as Devi Lal, who had claimed the support of the majority of the M.L.A.s was first asked to present his supporters before the Governor but later on Bhajan Lal was sworn in as Chief Minister. Bhajan Lal was asked to prove his majority on the floor of the House within one month. The Governor may, invite the leader of the largest majority party to form the government as was done by the Governor of Madras (Sri Parkash) in 1952 when he invited Rajaji to form the Congress government, he may wait till the decision of the parties forming a coalition is available to him as the Governor of the West Bengal (Dharam Vira) did in 1967 by inviting Ajoy Mukerji to form the government. He may also send a report to the President saying that the uncertain verdict of the electorate be set aside and the State be placed under Article 356 as no party is able to form the government as was done by the Governor of Kerala (A.P. Jain) in 1965. But now in the light of S.R. Bommai case (1994) and the Allahabad High Court judgement in 1996 the Governor must make sincere efforts to appoint a democratically elected govt. before such decision.

As the constitution says nothing about the qualifications of the Chief Minister, the Governor is confronted with a very peculiar problem of choosing an incumbent for this post in the highly fluid party position. It is required that the Governor should invite a man for forming the Government who commands majority behind him. It thus leaves every room open for a man to grab the office whether he is a member of

the lower or upper house of the legislator or even of neither, in case he manages to requisition the support of the majority members in the Vidhan Sabha. However, a comparative study of various situation that a Governor may face in this direction shows that his power of appointing the Chief Minister involves these dimensions.

1. The Governor has no real choice open to him in appointing his Chief Minister when a single political party has a clear majority in the State Legislative Assembly whether it is the Congress or Janata or anyone else. Thus, we find that Ms. Jayalalitha and after her Karunanidhi were appointed as the Chief Minister of Tamil Nadu in view of the fact that the AIDMK and later DMK had absolute majority in the Vidhan Sabha. Likewise Governors had to appoint the leaders of Janata Party as Chief Ministers in their States (U.P., Bihar, Haryana, Madhya Pradesh, Orissa, Himachal Pradesh and Rajasthan) after the victory of this party in the elections of June, 1977. It is clear that the Governor in spite of being a nominee of this riding party at the Centre or himself being a veteran party man in most of the cases, has been incapable of exercising his discretion in a way contrary to rules of the parliamentary form of government.
2. The same is true if coalition of political parties formed before the general election, manages to secure absolute majority in the Vidhan Sabha and apprises the Governor of the name of their chosen common leader in time. Here common leader of pre-electoral alliance has the mandate of the electorate which the Governor should not and cannot dishonour. As such we find that the Governor of Kerala appointed EMS Namoodaripad as Chief Minister after the election of 1967.
3. The same may also apply to a case of post electoral alliance. In case there is no party in the Assembly, having clear majority and some parties manage to do so on the basis of some understanding or a common programme and then apprise the Governor of the name, of their chosen leader, then he must invite the leader to form government. It happened in West Bengal for instance after 4th general elections when Ajoy Mukerjee was appointed as Chief Minister. The appointment of Sardar Gurnam Singh in Punjab, M.P. Sinha in Bihar and Charan Singh in U.P. may be cited as other examples of the same sort in the post 1967 election phase.
4. In case Governor finds that there are no prospects of various parties coming together to form the government, he may wait for some time and thereby give an opportunity to the parties to thrash out matters in a way that the formation of government becomes a possibility. For this sake, he

may recommend to the President imposition of emergency under Article 356 for a short period. The dimension of Governor's discretionary power is, however, amenable to sharp political controversy as his action is sure to become quite an unpleasant affair for one party or another. Here the example of U.P. after the last Assembly elections which resulted in a "Hung Assembly" may be quoted. The Governor did not invite the leader of BJP to form the govt. barely on the ground of its being the largest party but recommended continuation of President's rule keeping Assembly in suspended animation. Earlier the action of the Governor of U.P. was widely criticised when after the dismissal of the Charan Singh ministry in September, 1970 on the plea of Congress withdrawing its co-operation from the BJD led ministry, he advised the President to invoke Article 356 so as to keep the Assembly under 'suspended animation'. The Governor invited T.N. Singh shortly thereafter to form the government when political forces polarised by the middle of next month. In March, 1967 the Governor of Rajasthan (Sampurnanand) recommended to the President to invoke Article 356 for the time being. The result was that the Assembly was put under 'Suspended animation' and Sukhadia could not be appointed as the Chief Minister after an interlude of about 40 days, by virtue of being the leader of the largest party in the house. The example of Suresh Mehta's BJP govt. followed by temporary President's rule and then the formation of Vaghela's Maha Gujarat Janata Party govt. in 1996 is also there.

5. It is also possible that before inviting a person to form the ministry, the Governor has his own assessment of the situation. In the case of no party having clear majority in the Vidhan Sabha, he may seek the advice of the Advocate General and then take decision. The Governor of Bihar sought the advice of his Advocate General and then wrote to B.P. Mandal a very keen aspirant for the office. He may also invoke the plea of no possibility of having a 'stable government' and thereby recommending to the President his proposal of placing the State under President's rule as was done by the Governor of Uttar Pradesh in February, 1968 after the fall of the Charan Singh Ministry.
6. Apart from looking into the position after general election, let us also examine a situation created by the death or resignation of a Chief Minister. Here in figures the issue of succession. In case there is a clear majority of a single party, there may be no difficulty in choosing a successor. Thus Karunanidhi was appointed as the Chief Minister of Madras after the death of Annadurai. A difficult situation may arise when several ambitious leader

are in the race. The Governor is expected to wait and watch the situation and invite the leader of the majority party after the leadership controversy is settled. Thus, the Governor of Gujarat acted properly in inviting Chimanbhai Patel to form the government after the leadership dispute was settled in New Delhi in which Kantilal Ghai was defeated.

The appointment of the Chief Minister falls within the discretionary power of the Governor, though the element of discretion should not be allowed to prevail in an unscrupulous manner. In this direction one may hint at two unfortunate developments.

1. First the triangled issue of the leadership of the State government is settled in a way which brings in the involvement of Central leaders. Sometimes, the leaders of the state units of different parties rush to New Delhi for a settlement of the problem. Thus the central leaders of the ruling party at the centre most of them occupy ministerial seats have been taking active interest in the selection of Chief Ministers of the States and the formation of State Ministers in the States where party gets the majority. Both under the Congress and the Janata Party matters relating to the selection of the Chief Ministers used to be settled either in New Delhi or in State capitals but definitely with the involvement of the Central leaders of the major political parties of the country. The present BJP leadership is also no different. It is highly unfortunate as it has its sinister impact upon the composition and wording of the State Council of Ministers or the leadership of the Chief Minister.
2. It is, nowhere, laid down that the Chief Minister must be a member of the Vidhan Sabha. We have failed to involve such a healthy convention and in this regard too both the erstwhile ruling Congress and the Janata Parties have played the role of a great constitutional culprits. The recommendation of the Administrative Reforms Commission that the Chief Minister must invariably belong to the Vidhan Sabha has remained unimplemented so far due to political reasons. It is owing to this lacuna that Rajaji was appointed as the Chief Minister of Madras in 1952 when he was a member of the Vidhan Parishad. He was, rather, nominated to the Vidhan Parishad for this purpose. Men like C.B. Gupta in Uttar Pradesh, B.P. Mandal in Bihar, Morarji Desai in Bombay and Giani Gurmukh Singh Musafir in Punjab were appointed as the Chief Ministers without having their seats in the popular chamber of the State Legislatures. To cite some

1. M.V. Plyee : "The Role of State Government in India", in the *Indian Political Science Review*, Vol. II, 325, p. 190.

other instances, we may refer to the case of R.N. Yadav of Uttar Pradesh, Bhairon Singh Shekhawat and Karpoori Thakur of Bihar who could capture of office of the Chief Minister in their States without having the membership of the Vidhan Sabha.

What is required, however, is that the Governor must exercise his discretionary power in regard to the appointment of the Chief Minister very cautiously. So that his action remains immune from the allegation of political partisanship. He must avoid haste as well as undue delay in the appointment of the Chief Minister. The most obvious instance of the partisan role of the Governor relates to as of Orissa where he in April, 1958 did not accept the resignation of the Chief Minister (Dr. Harkrishan Mehtab) rather used his discretionary power in requesting him to withdraw his resignation that he (Mehtab) ultimately did. The appointment of the Chief Minister is by all means a matter falling within the discretions powers of the Governor but the latter should exercise his discretion with restraint and tact. The paramount fact must always be born in mind that not a subjective but an objective as assessment must be the guiding factor as the supreme verdict of the electorate may decide the issue to the great satisfaction or dissatisfaction of the Governor. He must kept it in his discretion by his subjective assessment of the political forces, for if the Chief Minister appointed by him is subsequently defeated on the floor of the Assembly, a general election before or after President's Rule is inevitable and if the Chief Minister dismissed by him earlier returns with a majority in the Assembly, the Governor is bound to re-appoint him as the Chief Minister. The Governor has discretionary power in dismissing him in one of the three conditions.

1. In case he is satisfied that the Chief Minister has lost majority in the Vidhan Sabha but this satisfaction has to be on the basis floor test in Legislative Assembly.
2. In case he is satisfied that the decisions or orders of the Council of Minister a violative of the spirit of the Constitution, or they are repugnant to the directions issued by the Centre and as much they are likely to create conditions of a Union State conflict and confrontation.
3. In case he is satisfied that the Chief Minister refuses to tender his resignation after his defeat in the Vidha Sabha or that he does not reconcile with his proposal of calling the session of the Vidhan Sabha at the earliest possible date so as to decide the issue of majority behind him.

It is, however, required that before taking such a drastic, step, the Governor must not be guided by his subjective satisfaction rather he should objectively examine

the weight of material information available to him to strengthen in the, bonafides of his satisfaction.

The Constitution is very clear in providing that the term of the Chief Minister depends upon the 'pleasure' of the Governor. The word 'pleasure' is very important. In its essential implications it says that the Chief Minister must be possessing two qualifications while in the office :

- (i) He must be having behind him absolute majority in the Vidhan Sabha.
- (ii) He must be acting in a way as to defend and protect the constitution. If the Governor is satisfied the Chief Minister lacks any of the two qualification of both, he is justified in dismissing the Chief Minister and appointing another in his place of recommending the President to invoke Article 366 of the Constitution.. Dr. Ambedkar made the meaning of the word 'pleasure' very clear when he said, "I have no doubt about it that it is the intention of this Constitution that the Chief Minister shall hold office during such time as it holds the confidence of the majority, it is on this principle that the Constitution will work. 'During pleasure' is always understood to mean that the pleasure shall not continue notwithstanding the fact that the Ministry has lost the confidence of the majority. It is presumed that the President or the Governor will exercise his pleasure in dismissing the ministry and, therefore, it is unnecessary to differ from, what I may say, the stereotyped phraseology which is used in all responsible governments."

Functions, Powers and Position

The functions and powers of the Chief Minister, in theoretical perspective may be enumerated as under :

1. He is the working head of the State government and as such he advises the Governor in matter relating to the selection of his Ministers, Cabinet Ministers, State Ministers and Deputy Minister and Changes their portfolios or their removal from the government.
2. He presides over the meetings of the Council of Ministers and sees to it that the principle of the collective responsibility is maintained. Hence he may advise a Minister to tender his resignation, or advise the Governor to dismiss a Minister in case he differs from the policy of his cabinet.
3. He communicates to the Governor all decisions of his Council of Ministers relating to the administration of State affairs and proposals of legislation.

4. He also furnishes to the Governor such information relating to the administration of the State of affair and proposals of legislation as he may call for.
5. He places a matter for the consideration of the Council of Ministers where the Governor requires him to have the decision of his government.
6. He acts as the sole channel of communication between his ministers and the Governor. If the Governor desire to see the ministers or in case the ministers seek to see the Governor for any official purpose, it must occur with the prior information conveyed to him.
7. Likewise, the Chief Minister is the sole channel of communication between his ministers and the legislature. He directs as to what his ministers must speak in the House to divulge the frontiers or the details of his official policy. When there is vehement criticism of his government in the legislature, he himself holds the floor to face the onslaught of the opposition and thereby saves his government from being hecked or defeated.
8. He is the leader of the majority party and as such, it is his duty to see that discipline is maintained. For this he appoints the whips and sees to it that their orders are invariably carried out.
9. Usage requires that the Centre must consult the Chief Minister before making the appointment of Governor of his State.
10. He represents the State in the meeting of several bodies of Union state co-ordination or co-operation like the National Development Council, Zonal Councils and Annual Conference of the State Chief Ministers.
11. He may tender his resignation at any time and then advise the Governor to summon such a person for the installation of another ministry or dissolve the House and thereby place the state under President's rule. It, however, depends on the individual judgement of the Governor to accept the advice of the outgoing Chief Minister or not.

While a theoretical study of the functions and powers of the Chief Minister show that he is more or less like the Prime Minister in his State Government, in practice he is either a very strong head of the State Government that ascribes to him the title of being the 'Provincial Nehru' or he may be a very weak leader of the State Government, virtually a prisoner of the circumstances following the law. "I am their leader and therefore, I must follow them". If studied in purely practical perspective, the actual position of the Chief Minister is dependent upon the following situational dimensions :

(i) Chief Minister belonging to Ruling Party at the Centre

A study of the Indian politics in the pre-1977 phase (when the Congress remained in power at the Centre) shows that the Chief Minister of the Congress party having a comfortable majority behind him remained in a very strong position as he found in the Governor in the legislature of the state only as puppets. His induction in office was a result of the invisible blessings of the High Command. In most cases, he was a man of the Prime Minister. What determined his basic appointment and his strong unassailable position was the support of the local units of the party. Thus, men like B.C. Roy in West Bengal, G.B. Pant and C.B. Gupta in Uttar Pradesh, K.N. Kanju in Madhya Pradesh and Sardar Partap Singh Kairon in Punjab proved themselves as very strong leaders of their State Governments. They were very capable leaders and had their equation with the Prime Minister by virtue of which they could exercise their leadership. To cite other instances, one could say the same thing about men like Bansi Lal of Haryana and S.S. Ray of West Bengal. It was often found that the Prime Minister himself/herself played a positive role in the selection of the Chief Minister and either a local leader being in the best books of the centre leader of the country was inducted into the office of the Chief Minister as we found in the case of Giani Zail Singh of Punjab and N.D. Tiwari of Uttar Pradesh or the supreme leader deputed some of his/her trusted ministers to a State to work as the real head of the executive as Mrs. Gandhi did for Ray, N. Satpathy, Sethi and Bahuguna. Not only this the Prime Minister, while keeping in view the tug and pulls of politicians could ask her trusted lieutenants to quit and thereby clear the way for the coming of someone else even as non-congressman as was done by Mr. Qasim for Sheikh Abdullah in Jammu & Kashmir in 1975, or worldly wise Chief Minister could oblige his supreme leader in this regard with the paramount consideration of maintaining cohesion in the ranks of the organisation as was done by Bahuguna in Uttar Pradesh shortly thereafter. Even in the present circumstances, the selection of the Chief Minister in the Congress (I) ruled states is not a matter of election of the leader by the M.L.A.'s of the Congress Legislature party but it is the High Command in most of the cases which decides and selects.

It may be understood without any difficulty that a Chief Minister is the prototype of the Prime Minister so far as the area of his executive authority is concerned. He could induct any man of his choice into his cabinet or throw him away. Kairon got his ministers (Rao Birendra Singh) dismissed by the Governor in August, 1961 and so in June, 1974 Bansi Lal had his minister (Mrs. Chandrawati) sacked in the like manner. Such a Chief Minister hardly bothered for the discretionary power of the Governors or for the weak and meek opposition that took place in the Vidhan Sabha. He took it for granted as the legislative Assembly could not pass a

vote of censure the party men having any degree or differences with the policy. Thus, it was neither the pleasure of the Governor nor that of the Assembly but of one man the Prime Minister that decided the fate of Chief Minister. It was on account of this latent as well as patent fact of state politics that the withdrawal of the pleasure of the supreme ruler amounted to the eventual exit of the Chief Minister. A strong Chief Minister like Kairon of Punjab had to go in 1964 as Prime Minister Shastri took a very serious view of the structures passed against him by the Das Commission. Another strong Chief Minister like Kamalapati Tripathi in Uttar Pradesh had to go as Prime Minister. Mrs. Gandhi took as equally serious view of his incompetence in dealing with the Provincial Armed Constabulary's Revolt in 1973.

(ii) Chief Minister belonging to Opposition Party in the Centre

The position of a non-congress Chief Minister can be described as neither very strong nor very weak as we shall find in this category keeping in view the political developments on the pre and post sixth parliamentary elections. In the pre-1977 phase, such a Chief Minister felt like having a natural opponent in the Raj Bhawan by virtue of the Governor being a nominee of the Congress ruled Centre. He got his office by virtue of being the leader of the clear majority party that left no other option in the hands of the Governor that to pick him up for the august post. He could, however,

For instance, while referring to the election Mrs. Gandhi as the leader of Congress Parliamentary party in January, 1966, it is observed by a former distinguished bureaucrat. "The Chief Minister of the States were not to be left out : almost all the them rallied to Mrs. Gandhi's support against Desai. They would be unhappy at the prospect of the end of Prime Minister they foresaw. Desai would make ever, rigid, hard almost harsh, a personality difficult to approach and more difficult to come under the pressure of the public need to compromise and adjust. His own record as Chief Minister would prefer a gentler hand over them from the Centre. And what better to that end that Nehru's frail daughter Mrs. Gandhi who said nothing and did less. Wisely she left others do it for her. There were plenty of these specially amongst the young ones and they gleefully went to work on her behalf and against Desai, S.S. Khera, *The Central Executive*', p-127.

While referring to position before 1967 when Congress was in the hey day of its power, it was not difficult to find that 'whenever there was a difference between the Governor and the Chief Minister. The Governor either yielded or resigned or was transferred J.R. Siwach : office of the Governor p.256. This writer refers to episode of Bihar where the Chief Minister D.R. Sinha had some scuffle with the Governor J.R. Dutat Ram. When the matter came to the notice of the Prime Minister Nehru, he is reported to have said that he could advise the President to remove the Governor, but he had no power to temper with an elected Chief Minister. As a result the Governor resigned *Ibid*.

face critical role of the Governor now and tackle it carefully to avoid the use of his discretionary power as he (Governor) in most of the cases was expected to do anything great at the invisible dictates of his masters sitting in New Delhi. The Chief Minister had however nothing to fear from the side of the Vidhan Sabha unless there were forceful dissident element in his party to create problems for him. Such situation should be studied in the cases of the DMK government in Tamilnadu and Akali Dal in Punjab. While the DMK Chief Minister like Annadurai and Karunanidhi managed to exercise their authority effectively owing to their hold over the organisation. In Punjab, the Akali Dal Chief Minister Badal failed to do the same owing to their over riding control of Sant Fateh Singh and inner dissensions formatted by the group of men like Tarlochan Riasti. It was on account of this fact that while Karunanidhi could remove Harijan Welfare Minister (Mrs. Muthu) without any difficulty. Badal's like attempt in the case of his Public Relation Minister (Riasti) took the toll of his Government.

A basic change in the political situation of country occurred owing to the defeat of Congress Party at the hands of Janata Dal in the Parliamentary election of March, 1977 and the Assembly elections in 10 states held four months after. While the Janata Dal was able to muster a comfortable majority in the States of Uttar Pradesh, Bihar, Madhya Pradesh, Orissa, Haryana and Himachal Pradesh, regional parties like the AIADMK and Akali Dal captured majority in the States of Tamilnadu and Punjab respectively. The result was that the offices of the Chief Minister went to the non-Congress leaders including the case of West Bengal where the CPM Chief Minister showed considerable freedom from the control of the Centre because of the weak character of the Janata Party and its policy to follow the policy of State autonomy. One may, however, take note of the fact that while the AIADMK, Akali Dal and C.P.M. Chief Ministers showed their effective authority in running the administration of their States. The Janata Chief Ministers like Devi Lal of Haryana, Kailash Nath Joshi of Madhya Pradesh, R.N. Yadav of Uttar Pradesh, Karpoori Thakur of Bihar, Vinayak Acharya of Orissa and Shanta Kumar of Himachal Pradesh were not able to act like Badal of Punjab or Ramachandran of Tamilnadu or Jyoti Basu of West Bengal on account of being nominees of the Central leaders instead of being the freely and fairly chosen leaders of the legislature of their party. The internal clash among the top leadership of the Janata Party and the active involvement of Central leaders of the Party in State Government affairs resulted in toppling Yadav government in Uttar Pradesh, Karpoori Thakur government in Bihar and Devi Lal government in Haryana. Presently, also the situation such that in Congress (I) ruled states the appointment of Chief Minister or his replacement, a ruling party at the centre in the non-congress Governments in the states, the Chief Minister had been dismissed by the Centre. The Kalyan Singh government in Uttar Pradesh had to go over the demolition of

Babri Masjid and other BJP Chief Minister (M.P., Rajasthan and Himachal Pradesh) too had to go in 1993.

(iii) Chief Minister of a Coalition Government

The Chief Minister of a coalition government is virtually a prisoner of political circumstances. He holds his office at the pleasure of the parties constituted majority for this purpose. What handed over his head is the fear of and party's getting out of the coalition. Thus, the Chief Minister has nothing else more urgent than to see that there develop no cracks; that eventually destroy his government. As we have been seen during the era of the politics of Fragmentation (1967-71) many coalition governments came with the wind and went away with the whirlwind for no other than the ineffective leadership of the Chief Minister. The constituent parties setup a co-ordination committee that eventually became the super cabinet and it became directly essential for the Chief Minister to honour the decision of this committee irrespective of the fact that it was headed by a non-minister and it consisted even of some parties having no representation in the ministry at all. It created problems for some Chief Ministers like G.N. Singh of Madhya Pradesh, Charan Singh of Uttar Pradesh, Sinha of Bihar, Gurnam Singh of Punjab and Rao Birendra Singh of Haryana who ultimately had to quit their offices in sheer disgust. The pitiable position of a Chief Minister like Ajoy Mukherji of West Bengal reached a point that he could not rectify the highly erratic behaviour of his Home Minister Jyoti Basu who openly contended that the distribution of portfolios was in concern not of the Chief Minister who himself was a creature of coordination committee turned into a super cabinet. Mayawati as Chief Minister of U.P. (in her earlier stints) could not rule for long as hers was a government supported by BJP. Even during her short stay she was not able to assert herself. However, presently she again is head of BSP-BJP alliance government and the BJP appears to be not in a mood to disturb the stability of the government. Hence, Mayawati is behaving much more effectively.

The Chief Minister of coalition government had, thus his natural opponents on all fronts in the Governor, in the Council of Ministers, in State Legislature. The State legislature managed to assert its parliamentary control in the event of dwindling majority behind the Chief Minister and more than that, in the astounding event of ministers clashing with each other openly for no other reason than to make a cheap exercise in the direction of flattering their possible supporters. It was very deplorable event to see that the ministers often acted in disregard to the principle of collective responsibility. Its most condemnable instance was afforded by the Government of West Bengal where the Chief Minister (Ajoy Mukherji) had; to go on fast, twice for making a moral change in the attitude of his Home Minister (Jyoti Basu) whose followers created scenes of violence at a place chosen by the fasting Chief Minister

for the purpose of realising him by Gandhian Techniques. Above all there was the Union Government that played its own part in making the State Government ineffective and unpopular so that ground was prepared for the return of the Congress Party to power. The Senior Leader of the Congress party could be found offering temptation to the constituent element of coalition or non-congress government with no other motive than to see that their party regained lost paradise of power.

One may disagree a bit with the case of the last category and therefore, discover some amount of sympathy from the side of the Governor and also from the Union government in case there had been a coalition government with ruling party as one of the constituent elements as that of Kerala under Achutha Menon. But this example should, however, not be carried too far in view of the fact that the Congress party by the very reason of its amorphous character had itself been a coalition organisation of diverse interests and what it had really desired was its own government without having even the formal stamp of a coalition setup. As the congress had been running its government in most of the States and its Chief Minister had been acting at the behest of their real rulers sitting in New Delhi, it could be concluded that the Chief Ministers had reduced themselves to position of the chief messengers of the party led by the Prime Minister the supreme leader of the Congress organisation and the supreme ruler of the country.

EMERGING NATURE

Not much can be said with certainty so far as the emerging role of the Chief Minister is concerned in view of the shifting political equations of country both at the Union and State level. One may, however, take note to the following essential points :

1. Though we have a federal system with parliamentary form of government at the Union and State levels and that strengthened with the bonds of hitherto single dominant party system. It could be taken for granted that the Chief Minister of a State must be having good political equation with the Prime Minister of the country. Worldly wise Chief Ministers have paid due regard to this political truth, it is due to this that men like Kairon of Punjab, B.C. Roy of West Bengal, G.B. Pant and Sampurnanand of Uttar Pradesh, Sukhadia of Rajasthan and Bansi Lal of Haryana had been able to run their governments successfully and thereby won the laurels of being Chief Ministers of their states. Not only this, the Chief Ministers could show their political weight in the selection of the Ministers as happened in 1964 and 1966. In case the Chief Minister to a party different from that of a Prime Minister, he has to adopt a policy or

strategy in a way so as to win the pleasure of the Centre or face the dismissal of his government. We may find that even a stable Chief Minister of DMK had to go with his government in 1976. While 9 Congress governments were sacked in a single stroke in 1977. It shows that the emerging role of the Chief Minister requires of him to enjoy the pleasure or at least avoid the displeasure of the Centre.

2. It, however, does not mean that a Chief Minister should consider himself as nothing else than a nominee of the Centre. What really desired is that he should carry his colleagues and party with him and act in a way that the interest of his state are protected and promoted. He may go to the extent of ignoring his Governor in the name of himself being a leader with the mandate of the people, but he is not expected to behave autocratically with his colleagues. More so in a coalition because the position of Chief Minister belonging to Janata Party shows that he had to keep different shades of his party men, occupying important offices in the organisation and government in New Delhi. In such a situation the Chief Minister has to depend upon the strength of some of his party leaders in view of his former relations and at the same time face the dilemmas created by the offshoots of the new loyalties of his colleagues, otherwise he would make himself an object of criticism not as much outside as inside his own organisation. The position of a Chief Minister with solid majority in Assembly and ability to perform the uninterrupted rule of CPM government in West Bengal under the Chief Ministership of Jyoti Basu shows that it is not a big factor whether same party is ruling at the centre or not.

R.N. Yadav and Karpoori Thakur had made themselves as objects of attack even by their own party leaders like C.B. Gupta and Ram Dhan who accused them of being unsuccessful in checking the deteriorating law and order situation, keeping in price stabilisation or protecting the interests of Harijans and weaker sections of the people. Devi Lal of Haryana and Shanta Kumar of Himachal Pradesh had more trouble from the members of their own party than the opposition. Similarly the dissidents in Karnataka were successful in creating trouble for the Chief Minister Bangarappa who ultimately was asked by the party High Command to resign. This happened in the Congress (I) Party ruled states.

3. The Chief Minister has to look to the interests of his own State while looking at the interests of the country as a whole, while it would be too much on the party of a Chief Minister to protect the interests of his State at nation's expense, it would also be too much to ignore them altogether. A

happy balance would be established between the purely regional and national interests. A general study of the office of the Chief Minister as held by Congress as well as non-Congress leaders in different States of the Indian Union and at different stages in the political development of our country shows that the emerging role of the wielder of this office has been an indication of either of the three situation dimensions. First he is the Chief showman in case his party commands clear and comfortable majority in the Vidhan Sabha and his leadership is unassailable by virtue of his personal hold and influence over the organisation coupled with his intimate association with the Prime Minister provided he belongs to the ruling party. Secondly, he is like a chief spokesman if he very much counts upon the support of his lieutenants who have their strong basis in the organisation and thereby keep on making his position more valuable by virtue of their strong ties with the Prime Minister and his colleagues no matter he belongs to the ruling party or not regardless of the fact that his party commands clear majority in the Vidhan Sabha. Last, he is a leader of different constituents of coalition government who have no hesitation in identifying him with a postman.

The developments in U.P. (since November, 2002), where Mayawati was heading a BSP-BJP coalition government, brought out the Vulnerability of the Chief Minister when there is factionalism and dissidence in the ruling coalition partners. Though a banner of revolt was raised by some independents and ten BJP dissidents claiming that the Mayawati government had come in a minority, but the situation was brought under control. However, process was started to disqualifying the ten BJP members under Anti-Defection Act. The independent M.L.A.s suffered the wrath of the government when criminal cases were opened against them. Even one M.L.A. from BSP was also arrested. This is the dirty aspect of today's opportunistic politics. For the time being, the stability of Mayawati government was not in danger. Now SP Govt is working since March 2012, problems are same on one issue or the other.

Additional Readings

1. *Report of the Administrative Reforms Commission.*
2. *Indian Political Science Review*, Vol. II.
3. *Constituent Assembly Debates*, Vol. III.
4. *The Central Executive* by S.S. Khera.
5. *Office of the Governor* by J.R. Siwach.

HIGH COURT – ORGANISATION AND JURISDICTION

Introduction

Although the Indian Constitution sets up a federal polity in India, yet it provides for the single unified and integrated judicial system in the country. We do not have double set of courts, one for the Centre and another for the units (States) There is only one system of fundamental law and Justice in the whole country with the Union Supreme Court at the apex of the Judicial Organisation and the State High Courts just below it. The High Courts in the states are not the third organs of the State Governments but are integrated with the Supreme Court. "There is a good deal of uniformity and centralization", Ganvade Austin has observed, "the centralization of the judicial' system is made clear not only by the single hierarchy of courts, there are not autonomous state courts in the American sense but the uniformity of law provided for by the Legislative Lists, criminal laws and procedure law dealing with marriage, divorce succession and the transfer of property (other than agricultural law), concurrent legislative list and, therefore, subjective to legislation either by Parliament or by State Legislatures."

Under the Indian Constitution the organisation and the Jurisdiction of the State High Courts is a union subject. The judges of the High Courts are appointed and can be transferred from one High Court to another throughout India by the President of India by the warrants under his seal. Of course, the Chief Justice and the Governor or the concerned state advise the President in the appointment of judge. Again, it is President alone who can dismiss a judge of High Court provided a special address of impeachment is passed by the Union Parliament. The Parliament alone can enlarge the Jurisdiction of the High Court Judges. The Supreme Court also possesses the power to hear appeals from High Court and the former has the final word in such cases of appeal The rulings of the Supreme Court lay precedents which the High Courts and other subordinate courts must follow.

The Supreme Court can also grant a special leave of appeal against a Judgement of the High Court except Court Martial.

In having a unified system of judiciary, India has followed the example of Canada, and to certain approximation to Australia In Australia, the High Court is at the apex and it entertains appeals from the state courts. In Canada, there is the Supreme Court at the centre, with provincial court in the units an advantage of the single unified judicial system is that it is a simplified judicial system, and its working is not so conflicted as that of dual system of courts like in USA.

The Constitution of India provides for a High Court in each state. Vide the 7th Constitutional Amendment Act of 1956, the Parliament has been empowered to establish a common High Court for two or more states as well as for the Union Territory. At present the State of Punjab, Haryana and Union Territory of Chandigarh have common High Court. Thus, the Parliament can extend the jurisdictional area of High Court or exclude it from a Union Territory. At present there are twenty one High Courts in the country with four having jurisdiction over more than one state?

Regarding the number of judges in a High Court no definite number is fixed. Article 216 (which does not apply to Jammu and Kashmir State) states, "Every High Court shall consist of a Chief Justice and such other judges as the President from time to time may deem it necessary to appoint. In order to meet temporary increase in the work load of the High Court on account of huge arrears, the President can also appoint qualified persons as additional judges for a period not exceeding two years, subject to maximum of 62 years of age, at which every judge of the High Court, including the Chief Justice, retires. The President may also appoint temporary Judges to fill vacancies caused by reasons of absence or any other factor in the category of permanent Judges. As the number of judges in High Courts is not uniform it varies from High Court to another i.e., the Assam High Court has 19 judges, whereas the Allahabad High Court has 33 judges which is the largest High Court. The strength of the Punjab and Haryana High Court is 26 permanent and 6 additional judges.

Article 217 (not applicable to J & K) deals with the appointment, resignation, retirement and removal of High Court judges. A High Court judge is appointed by the President of India by Warrants under his hand and seal in consultation with the Chief Justice of India, the Chief Justice of High Court concerned and the Governor(s) of the state(s) concerned. In doing so, we have followed the British pattern, as there the Judges of the High Court are appointed by the Lord Chancellor who is a member of a Cabinet. A High Court Judge may continue to be in office up to the age of 62. The age of retirement was raised from 60 years to 62 on the recommendation of the Law Commission 1958, although it has recommended 65 of age of retirement as in case of Supreme Court. This disparity in the age of retirement of the judges of Supreme Court in India is really not understandable while both the categories of judges are found to be doing practically the same type of works.

Clause 2 of Article 217 lays down the qualification of the persons who can be deemed appointed as High Court Judges. As such, a High Court Judge must be a (1) citizen of India (2) must have held judiciary office in the territory of India for 10 years or have been an advocate in a High Court or in more High Courts for the same period in succession.

As an explanation to this, it is the rule that in counting the period during

which a person has been an advocate, of a High Court, that shall be included which he has held judicial office, after he became an advocate. Obviously, then there is a contrast between the Supreme Court and the High Court, namely, where as under clause 3 (of Article 124), there exists provision of non-practicing lawyers as a Supreme Court Judge there is no such provision in a High Court as far as the appointment of Judge is concerned.

No court in the country is competent to go into the question of determining the age of the High Court judges. This is to be decided by the President in his discretion. Of course, in doing so the President is supposed to consult the Chief Justice of India and the judge concerned is also given an opportunity to give his own explanation in support of his age, if the same has been called in question. A case of Justice Jyoti Parkash Mitter of the Calcutta High Court who had to retire in December, 1961 on attaining the age of 60 (under the original provision of the constitution) settled this whole issue once for all.

It may be pointed out that the appointment of High Court judge is a political decision to a greater extent, when a vacancy of High Court judge occurs, the Chief Justice of a High Court makes a proposal to the Chief Minister who puts it into the ear of the State Governor, who in turn gets it transmitted to the Union Minister of Home and Law (in actual practice of the Minister concerned) These ministers being the trusted men of the Prime Minister manage to convey it to the President. It can be inferred from the above that in the appointment of Justice R.S. Narula as the Chief Justice of Punjab and Haryana High Court in May, 1974, superseding Justice P.C. Pandit, who resigned in protest, the State Government had a big hand.

Article 219 lays down before a High Court judge assumes his office, he shall make and subscribe before the Governor of the state (or any other person appointed by him) to do so on his behalf an oath of affirmation saying that he will be true in faith and allegiance to the Constitution of India, uphold the sovereignty of India, duly faithfully and to the best of his ability, knowledge and judgment to perform the duties of his office without fear or favour, affection, or ill-will. Only after subscribing to this oath in writing and signing in it, shall a High Court judge assume his office?

Article 221 fixes the salaries and allowances of High Court Judges, which they get from the consolidated fund of the state, the same can not be reduced to the disadvantage of present incumbents. After the 54th amendment the salaries of the High Court judges had been increased. The Chief Justice of a High Court gets Rs 9,000/- P.M. Whereas other judges get Rs 8,000/- per month then Chief Justice of High Court started getting 30,000 and other judges 26,000/- per month but these are changed with time. In 2008 with salaries & conditions of service bill passed salaries increased. Chief Justice gets 90,000 & other judges 80,000. In case the financial

Emergency under Article 360, however, their salaries and allowances could be cut. A High Court judge could be transferred from one High Court to another by the President. Under Article 233, the President could also appoint a judge of High Court as an acting Chief Justice for reason of absence or inability of an existing incumbent to perform the duties connected with the office. Article 224 provides for the appointment of additional and acting judge in a High Court. Similarly, under the same article (224) retired judges could be appointed on the sittings of a High Court. It may be pointed out here that Article 223 and 224 do not apply to the State of Jammu and Kashmir.

Jurisdiction, Power and Functions of High Court

High Court is the highest court in the State the jurisdiction competence of High Court remains the same as before the commencement of the present Constitution. Actually, the High Court had been functioning for nearly nine decades before 1950 and the founding fathers must have thought it superfluous to give details of the same. As such Article 223 keeps intact all the old powers of jurisdiction of the High Courts, as before the commencement of the Constitution It may deal with the powers and functions of the High Court under the following heading:

- (i) Original jurisdiction
- (ii) Appellate Jurisdiction
- (iii) Powers of superintendence of Administrative Powers
- (iv) Powers of appointment
- (v) Court of Record,

To take up a brief discussion of the same, one by one

(I) ORIGINAL JURISDICTION

(A) Writ Issuing Power

A High Court enjoys a concurrent Jurisdiction with the Supreme Court to issue five types of writs, eg, the writs of Habeas Corpus, Mandamus, Prohibition, Quo warranto and Certiorari. The writ area of the High Court jurisdiction was redefined under 42nd amendment of the Constitution by inserting clause 38 for Article 256, Clause 38 read as under. Notwithstanding anything in Article 31 but subject to provision of Article 13 and Article 26 every High Court shall have powers, throughout the territory in relation to which it exercises jurisdiction to issue any person or authority including in appropriate places an government within those territories, directions, orders or writs including writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quowarranto or certiorari or any of them : (a) for the enforcement of any of the rights conferred by part or (b) for the redressal of any of injury of a substantial nature by reason of the contravention or any enactment or ordinance or any order, rule, regulation, by a law or other instrument

made the render or (c) for the redress of any other injury by reason of any illegality or any proceeding by or before any other authority in substantial failure of Justice.

The 44th constitution Amendment Act in December, 1997, changed this part of 42nd Amendment and the status quo was restored. Now the High Courts possess the power to issue all the five types of writs as before.

Earlier, a High Court could issue writs only within the areas of its own territorial jurisdiction and it was further maintained that the cause of action shall arise within the same area of jurisdiction. But 15th Amendment Act, 1963 had widened the area of jurisdiction of the High Courts to issue writs even outside the area of its jurisdiction including the Government of India, the LIC, the Custodian General of Evacuee Property and the Election Commissioner, Central Board of Revenue and the Income Tax Investigation Committee.

But the wide power of issuing writs is to be exercised in accordance with well established judicial principles when other normal remedies are not available. So the High Court is expected not to interfere in the normal course of administration through units. This is to be used only when the High Court is convinced that no other remedy for enforcing Fundamental Rights and Justice was available to an applicant. Invocation of writ is not a matter of right nor can be issued against a private person.

(b) High Courts Power to withdraw cases to itself

Under Article 228 the High Court also possesses the original power to withdraw cases to itself from a subordinate court if the case that is being tried in it involves a substantial question of law. In such a case, the High Court may either decide the case itself or determine the question of Law in that case then return it to the subordinate court with a copy of its judgment. This gives to High Court an exclusive power to interpret the constitution. No subordinate court or tribunal can do so. This ensures uniformity in matters of interpretation of the Constitution in the case of Article 228, either a subordinate court or an individual can move the High Court

(c) Trying Revenue Cases

Before the present constitution commenced the provincial High Courts had no power to entertain and try revenue cases

But under Article 226 of the present constitution this restriction on the High Courts was removed and the High Courts were given the power to review revenue case. wider clause 37 of 42nd amendment, it was provided that any restriction to which the exercise of original jurisdiction by High Court in Revenue matters was subjected immediately before the commencement of Constitution, shall no longer apply to the exercise of such jurisdiction The 44th Amendment Bill removed this

restriction and gave back to the High Court the Power to hear Revenue cases

(d) Trying Civil and Criminal Cases

Before the commencement of the present constitution the High Courts of Bombay, and Madras had original jurisdiction in civil cases involving a value of Rs. 2000/-. In addition they had also original jurisdiction in criminal cases referred to by the Presidency Magistrates. The same provisions were adopted by the new constitution of India in matters of Civil and Criminal cases except that in Civil cases the value of the suit was raised to Rs 25,000/- in the High Courts of Bombay and Madras.

The high Courts have also a limited original jurisdiction in cases dealing with divorce and marriage laws, company laws and contempt against itself.

(II) APPELLATE JURISDICTION

State High Court enjoy appellate jurisdiction in certain Civil and criminal cases. In Civil cases an appeal from a subordinate court can be taken to the High Court, provided the value of the suit Rs. 5000/- or more. In Criminal case an appeal to the High Court against a decision of the Session Court be made provided the subordinate court has sentenced an accused to 4 years or more of punishment or sentenced him to death. In revenue cases an appeal lies before the High Court against the decision of the Revenue Board. Similarly High Court can also hear appeals in cases involving insolvency, succession, patent and design.

[III) POWER OF SUPERINTENDENCE OR ADMINISTRATIVE, POWERS OF HIGH COURT:

The High Court of a State enjoys the Power of superintendence over all courts and tribunals in the state The High Court may (a) call for returns for such, courts (b) make and issue general rules and prescribe forms for regulating and practice and proceedings of courts (c) prescribe forms in which book entries and accounts shall be kept by such courts. The High Courts also have the power to settle the table of fees to be allowed to the Sheriff and all clerks and officers of such courts and to attorneys and pleader practising there in.

Under Article 227, the State High Courts also exercise a power of judicial revision i.e. it has the power to see that subordinate courts had worked within the limits, of their jurisdiction and acted in a legal manner. The power of the High Court to act in the matter is discretionary i.e. the High Court can interfere if an inferior court or tribunal acts beyond the limits of its jurisdiction, or if it has no jurisdiction at all and if it has encroached upon fundamental rights. The High Courts also exercise administrative control over the Transport Authorities under Motor Vehicle Act of 1930, the Rent Controller under the Rent Control Acts and the Custodian of Evacuee

property under the Evacuee Property Act of the 1950, the High Court can issue a writ a certiorari or otherwise question the orders of these tribunals or bodies possessing semi judicial power, but it must be pointed out that this power of the High Courts under article 227 is supposed to be used only in exceptional cases of flagrant abuse of elementary principles of justice and patent errors of law.

(IV) HIGH COURT'S POWER OF APPOINTMENT

Article 229 (which does not apply to the state of J & K) dealing with High Court's power of appointing officers and servants of High Courts lays down that appointment shall be made by the Chief Justice of the High Court or by such other officer or a judge of the court as he may deem fit provided that no such officers shall be appointed, except after consultation with the State Public Service Commission Further it is laid down, that subject to the provisions of any law made by the state legislature, conditions of service officers and servant of the courts shall be such as may be prescribed by rules made by the chief justice of the High Court. It is further provided that the rules made under this clause relating to salaries, allowance, leave for pension shall require the approval of the state governor. In article 229, clause (i) this power of. appointment also includes the power to suspend and dismiss court officers and servants.

(V) HIGH COURT AS A COURT OF RECORD

The High Court is a Court of Record. Its judgments are considered to be case laws. Article 215 (which shall not apply of J & K) lays down, that every High Court shall be a court of record and shall have all the power of such a court including the power to punish for contempt of itself. But, if a High Court judge presides over an industrial Tribunal, he shall not exercise such a power of contempt of court.

Contempt of Court is committed when (1) the court is scandalised (2) the parties concerned in a case are scandalised abused or (3) when any act is done or anything is published to bring the court or judge of a court into contempt or to lower his authority Contempt of court may be committed by a lawyer, a witness, party, a journalist or a Judge When litigation goes on, committing may prejudice parties, litigants or their witnesses, besides lowering the prestige of the court in public.

In dealing with a case of contempt, the High Court lays down its own procedure. A person committing contempt outside the area of jurisdiction of a High Court can be punished by it, provided he happens to be within its jurisdiction. A High Court has no power to arrest a person who is outside the area of its jurisdiction.

High Court's Judgments:

High Courts give their judgments openly and these are binding but the judgment of a single High Courts Judge does not bind Division Courts. It is binding only on every other judge. In case of a disagreement between two division courts of equal strength the question of law is referred to a fuller Division Bench. The decision of the fuller division bench is binding on all courts. When the former gives a decision it can not entertain an appeal from another Division Court. The Supreme Court of India is the only court which can reverse or over rule the decisions of a High Court or Division Bench.

Subordinate-Courts

Article 223 to 237 in Part VI of the Constitution deal with subordinate Courts, which work under the State Courts Majority of cases are actually decided by the subordinate courts The appointment of the judges in these courts their promotion transfer and posting is done by the State Governor in consolution with the State High Court. Recruitment to the position of a district judge is made either by promotion from judicial services of the state, or there may be direct recruitment from amongst the advocates and pleaders of not less than seven year standing on the recommendations of the High Court. The appointment of judicial officers (other than the District Judge, namely the Additional, Joint and Assistant District Judge) is made by the Governor according to rules made by him in consolation with Public Service Commission and High Court of the State.

The following three types of courts exist at the District level (I) Criminal Court (II) Civil Courts and the (III) Revenue Courts.

Criminal Courts : In every district there are courts of Magistrate Class II and Class I Chief Judicial Magistrate. Magistrate II Class can award punishment up to one year imprisonment and fine for Rs 1,000/- Magistrate Class I can sentence an accused up to 3 year, imprisonment and fine Rs 5,000-/ Chief Judicial Magistrate can award punishment up to seven years. Before 1973 there used to be court of Magistrate class III but by an amendment: in, the Code of Criminal Procedure in 1973 this court was abolished.

Session Court is the highest criminal court in district. Session judges hear a case involving murder or dacoity etc. He can also hear appeals against decision of Magistrate class I and Judicial Magistrates. Session Judges can also award death sentence but this has got too approved by the High Court of the State.

Civil Courts: Minor civil disputes are heard by the village panchayats. In cities there are small cases courts to hear minor civil disputes involving a sum of Rs 200/-. In addition there are class III, II and I Sub judges at the district level who can hear cases of the value of Rs. 5000/-, Rs. 10,000/- and more than Rs. 10,000/-

respectively. There is also a senior sub-Judge, who can hear appeals against the decision of subordinate civil courts. Then over and above them all is the District Judge. Normally, the District Judge and the Sessions Judge is one and the same person. When he hears civil cases, he is known as the District Judge and when he hears criminal cases he is called the Session Judge. He hears appeals against judgment of the subordinate Judges. He also possesses original jurisdiction in cases of divorce, insolvency, words, etc.

Revenue Courts: The lowest court to hear Revenue cases is that of Tehsildar, the Revenue Assistant. Then above him the Deputy Commissioners hear appeal in Revenue cases. Against his decisions the appeal lies with the Financial Commissioner and then to Board of Revenue. The State High Court is the final authority in a State and hears appeals in revenue cases.

Independence of State Judiciary:

An independent judiciary is the corner-stone of the Rule of law and of a democratic system. This requires that the judges must be free, fearless and they must possess courage of giving independent judgment without favour or frown, being faithful to the oath that they take on assuming office as judges.

A theoretical study of our constitution reveals that adequate arrangements have been made to make the appointment on merit; he enjoys security of tenure; and as a judge cannot be removed unless a resolution to that effect is passed by the Parliament by special 2/3 majority. The salaries and allowances of the State Judges are charged on the Consolidated Funds of the State. They are not subject to vote in the State legislature. Actions and decisions of the judges are immune from criticism. Even the parliament cannot discuss the conduct of the judges, unless a substantive motion of impeachment is moved in the House. The High Court has its own rules and regulations. A judge of court is barred from practicing after retirement in the same. However, he can plead or practice in any other High Court or Supreme Court.

But the study of the Indian Constitution between the lines reveals that there are several loopholes, which tell upon the independence of state judiciary, and the efficiency of the whole judicial system. In reality Chief Minister of the state is the real appointing authority to appoint a Chief Justice and Judges in a State High Court. These appointments have in fact become political in nature. The Law Commission in its XIV Report, of 1958 pointed out "Communalism, Regionalism and political patronage, in considerable measure influenced appointment to the High Court judiciary. 'This is very well illustrated by the cases of suppression of the judges here and there. Similarly, the provision for the appointment of an Acting Chief Justice is too mischievous. In this case an ambitious person having the requisite qualifications may manage to be appointed as Acting Chief Justice and to the executive to get his

appointment regularised. Moreover, there is nothing in the constitutions which may prevent a retired High Court Judge from taking job after laying down his office as a judge. The only bar is that a High Court Judge after retirement cannot plead before a court lower than the High Court,' The provision is very unfortunate. So many High Court judges have been appointed as governors, ministers, ambassadors, or chairman of some commission etc, after retirement all this is the patronage which is their real function. Then we find that the salaries and allowances of High Court Judges were too considered inadequate to give them better economic security: Before 1947, the Chief Justice of Calcutta High Court got Rs 6000 P.M While the Chief Justice of Madras, Bombay, Patna, Lahore High Court got Rs. 5000 P.M till as late as 1986 the Judges were paid only Rs. 5000/- and 4000/-, (Chief Justice and other judges respectively). Now 90,000 to Chief Justice of High Court & 80,000 to other judges. But at least this is not valid now. The Judges also do not follow the good principle of isolation from public and political life even when they sit on the bench. Sometimes, the executive is found to indulge in overriding the verdict of a High Court by use of some discretionary powers (as in the Nanavati case) or by bringing constitutional amendment (as in case of 25th amendment). The executive is also some times found to be criticising the decisions of the courts openly. This has a great impact on independence of judiciary. The political leaders have also come out with a theory of a committed judiciary, meeting that the Judges ought to be committed to the social and political philosophy of the party in power. This is very unfortunate and falls upon the independence of Judiciary.

Suggestions to make the State Judiciary Truly Independent:

The following suggestions could be made to make the state Judiciary truly independent:

- (a) A panel of distinguished jurists and legal experts be constituted out of which the President should make the appointment
- (b) Provision for appointment of Acting Chief Justice or adhoc Judge should be abolished.
- (c) Age of retirement of judges should be raised to 70 years.
- (d) No appointment after retirement of judges should be made.
- (e) The Judge should be barred from practicing before any court after retirement.
- (f) The judges must have enough moral force to discard material temptation and benefits.
- (g) The judges must remain aloof from public or political contacts.
- (h) Judges should be paid suitable pension after retirement so that they have sense of economic security.

If these suggestions are adopted, it is hoped that these would go a long way in preserving the independence of judiciary in our country.

BOOKS FOR FURTHER READINGS

1. The Constitution of India : *Ministry of Law, Justice and Company affairs.*
2. Gledhill Allon : *The Republic of India.*
3. Gokhale, B.K : *The Constitution of India and its working.*
4. Johri J.C : *Indian Government and Politics.*
5. Kao K.V. : *The Parliament Democracy in India.*
6. Gupta D.C. : *The Indian Government and Politics.*
7. Jain M.P. : *The Indian Constitution of Law.*
8. Bakshish Singh : *Supreme Court of India as an Instrument of Social Justice.*
9. Rajiv Dhana : *Supreme Court and Sovereignty of the Parliament.*
10. Kagzi, M.C.J. : *The Constitution of India.*
11. Seervai, H.M : *The position of the Judiciary under the Constitution of India.*
12. Sharma, M.P. : *The Government of Indian republic.*