

The State Executive Part VI [Article 153- 167]

- **Article 153 to 167 in part 6 of the Constitution deals with the State Executive**

GOVERNOR

- **Article 153** provides that there shall be a Governor for each state. The same person can be appointed as governor for two or more states.
- **Article 154** provides that the executive power of the state shall be vested in the Governor.
- The Governor is the **Chief Executive Head of the State**. Like the president, he is a head (titular or constitutional head).

- **Appointment of the Governor article 155**
- **Article 155** the governor of the state shall be appointed by the president by warrant under his hand and seal
- The Governor is neither directly elected by the people not indirectly elected by a special constituted electoral college as in the case of president
- **Hargovind vs Raghukul 1979** Supreme Court held that the office of governor of a state is not an employment under central government. It is an independent constitutional office and is not under the control of a subordinate to the central government.

- **Qualifications for appointment as governor [article 157]**
- Article 157 provided that no person shall be eligible for appointment as governor unless he is a citizen of India and has completed the age of 35 years

- **Term of the office of governor [article 156]**

- Joint reading of **article 156 [1] and 156 [3]** Provide that the Governor holds office for a term **of five years** from the date on which he enters upon his office. However his term is subject to the **pleasure of president**.
- **Resignation:** the Governor may by writing under his hand at least to the president, resign his office.
- Governor shall notwithstanding expiration of his term continue to hold the office unless his successor enters upon his office.
- The Constitution does not lay down any Grounds upon which a Governor may be removed by the president.

- **Conditions of governor's office [article 158]**
- **Article 158** provides that the Governor shall not be a member of either of the House of Parliament or of house of the Legislature of any state specified in the first schedule
- If a member of either of the House of Parliament or of a house of the Legislature of any such States be appointed governor, he shall be Deemed to have vacated his office in that house on the date on which he enters upon his office as governor
- The Governor shall not hold any office under the office of profit
- The emoluments and allowances of the Governor shall not be dismissed during his term of office.

- **Oath or affirmation by the Governor [article 159]**
- **Article 159** provides that before entering upon his office the Governor has to make and subscribe to an oath or affirmation. In his oath the Governor swears:-
 - A. To faithfully execute the office
 - B. To preserve, protect and Defend the constitution and the law: and
 - C. To devote himself to the service and well-being of the people of the state.
- Oath of office to the Governor is administered by the **Chief Justice of the concerned state High Court** and in his absence the senior most judge of the court available

- **Power of the Governor to grant pardons, etc [article 161]**
- **Article 161** provides that the governor of the state shall have the power to grant pardons reprise respite for emissions of punishment for to suspend, remit or commute the sentence of any person convicted of any offence against any law related to the matter to which the executive power of the state extends.

Ordinance making power of the Governor

Under Article 213, the Government can issue an ordinance if the circumstances compel him to do so, when either houses of the legislative assembly are not in session. However, there are two circumstances under which the Governor cannot issue an ordinance. They are:

- If the ordinance has certain provisions which the Governor would have reserved for the President in case it were a Bill.
- If the State Legislature has an act with similar provisions and the same would be declared invalid without the President's assent.

A convicted person cannot be appointed as Chief Minister:

Lily Thomas vs. Union of India, The SC held that “a person who is convicted for a criminal offence and sentenced to imprisonment for a period of not less than two years cannot be appointed the Chief Minister of a State under Article 164(1) read with (4) and cannot continue to function as such.

Advising the President for the Proclamation of an Emergency under Article 356

When the State Government is unable to function in accordance to the constitutional machinery, then the Governor sends a report to the President briefing him/her about the grievousness of the situation. This power has been granted to the Governor under Article 356. This may happen when there is a vote of no confidence in the house or a government breakdown in the state.

Protection of Governor

Article 361 lays down the provisions for the protection of the Governor. The Governor shall not be answerable to any court for the performance and disposal of his/her duties. There can be no criminal proceedings against him/her during the term of his/her office. Neither can there be a process to arrest him/her during the term of his/her office. Any civil proceedings in which relief is claimed against the Governor of a State, shall be instituted during his/her term of office in any court in respect of any act done or purporting to be done by him/her in his personal capacity.

Chief Minister and Council of Ministers

- The Governor is the nominal executive authority and the chief minister is the real executive authority
- The Governor is the head of the state Chief Minister is the head of the government
- The position of chief minister at the state level is analogous to the position of prime minister at the centre.

- **Appointment of Chief Minister and Council of Ministers**
- Article 164 provides that the Chief Minister shall be appointed by the Governor and the other ministers shall be appointed by the Governor on the advice of chief minister
- In the states of Chhattisgarh, Jharkhand, Madhya Pradesh and Odisha there shall be a minister in charge of tribal welfare who may in addition be in charge of the Welfare of SC and backward classes or any other work
- **Council of Ministers to aid an advice Governor [article 163]**
- **Article 163** provides that there shall be a council of minister with chief minister at the head to aid and advise the Governor in the exercise of his functions except insofar as he is by or under this constitution required to exercise function or any of them at his discretion.