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<b>Pre-requisites</b>	
<b>Objectives</b>	<ul style="list-style-type: none"> <li>• <b>To discuss the power and function of the Governor in the Indian Political System.</b></li> <li>• <b>To analyze powers and functions of the Chief Minister.</b></li> <li>• <b>Discuss the Composition and function of Legislature in the states in India.</b></li> </ul>
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### *Governments in States: Legislature, Governor, Chief Minister*

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#### **Introduction**

India is a federation in which power is clearly demarcated between Union and States. Indian Constitution is the largest written constitution in the world wherein the powers of state legislatures are well-defined in part VI of the Indian Constitution. Being federal in nature, Indian Constitution has made provision for uniform structure of government for state governments similar to that of central government barring Jammu & Kashmir. States in India enjoy freedom within the limits imposed by the Constitution. Since, India does not comply with

the norm of classical federalism; there are many unitary features in its Constitution which puts severe restrictions on the authority of states. As states in India have also adopted the similar parliamentary pattern, the state governments too have the provision of actual head and nominal head. Governor in state is the nominal head whereas Chief Minister exercises real executive authority along with its council of ministers. State legislatures too, consist of two houses commonly known as Legislative Assembly (Vidhan Sabha) and Legislative Council (Vidhan Parishad) although it is not a uniform phenomena and it depends on the size and willingness of the state government. As in the case of union government, Legislative Assembly is more powerful than legislative council. The state legislatures are empowered to frame laws for their respective states on the subjects mentioned in the State Subject.

Legislatures of states usually consist of Governor and state legislature and state legislatures are further divided into two houses namely Legislative Assembly and Legislative Council. While Legislative Assembly is found in every state, Legislative Council may or may not exist in a state. The Constitution makes the provision that the second chamber may be abolished where it exists as well as it may be created where it is not present by a simple procedure. It does not involve constitutional amendment. In order to bring such amendment, the state assembly must pass a resolution by a special majority i.e. two-thirds of the members actually present and voting for creation or abolition of the council.

This extraordinary arrangement was made in the Constitution for the states however; same was not done in case of Union Legislatures. The reason for not making it mandatory was that states being of poorer resources may find it difficult to have second chamber. Taking advantage of this provision the state of Andhra Pradesh created Legislative Council in 1957 and abolished it in 1985. Similarly West Bengal and Punjab too abolished their legislative Councils in 1969.

### ***Legislative Councils***

The provision regarding Legislative Council is made in the Article 171 of the Indian Constitution. The strength of the house varies however, the minimum strength is fixed as 40 and the maximum is determined on the basis of strength of the Legislative Assembly. The total strength should not exceed one third of the Legislative Assembly of the state. The composition of the council consists of partially nominated and partially elected members. 5/6 of the total

numbers of the Council are indirectly elected and 1/6 will be nominated by the Governor. Those who are nominated by the Governor are persons having special knowledge in literature, science, art, co-operative movement and social service. The members are elected through indirect method of proportional representation by the single transferable vote system.

### ***Tenure***

Like Rajya Sabha, the Council is a permanent body and is not subject to dissolution. One-third of its members retire on the expiry of every second year. [Art.172 (2)]

### ***The Chairman and Deputy Chairman***

Article 182 of the Constitution has provision of The Chairman and Deputy Chairman. They preside over all the sessions of the Council except where a resolution for their removal is under consideration. They never participate in voting except where there is a tie, they exercise their casting vote. Article 183 lays down rules through which they may either vacate their office or if a resolution of the council passes by its majority for their removal.

### ***Qualification***

As per provisions laid down under Article 173 in order to be member of state legislature a person should be a an Indian citizen and in the case of a seat in Legislative assembly not less than 25 years of age and in the case of a seat in the Legislative Council not less than 30 years of age.

The disqualification criterion is discussed in the Article 191 of the Indian Constitution under which certain norms have been laid down for the disqualification of the members. The disqualification criterion is as follows:

- a) Those members who hold any office of profit under central or state governments.  
However, state may by law declare certain offices as not attracting disqualification.
- b) Is of unsound mind.
- c) Is an undischarged insolvent.
- d) Is not a citizen of India or has voluntarily acquired citizenship of another country.

- e) Is disqualified by law made by Parliament

### ***Powers and Functions of the legislative Council***

In order to pass an ordinary Bill, a procedure similar to that of Parliament is followed. An ordinary Bill may originate in either House of State Legislature in which there is a provision of two houses. Ordinary Bills other than Money Bills can originate in either House. In case of Money Bills, the Legislative Council must return the Bill to the Legislative Assembly along with its recommendations and suggestions within 14 days from the date of its receipts. However, in case of Non-Money Bills, certain restrictions have been placed on Legislative Council under Article 197. It stipulates that if a Bill is passed by State Legislature and transmitted to the Legislative Council, it may

- A) Rejected by the Council
- B) Three months have passed from the date on which the Bill was laid before the Council and the Council has not passed it., or
- C) The Bill is passed by the Council with certain amendments to which the Assembly does not agree.
- D) In such case, assembly may pass the bill once again with or without amendments as suggested by the Legislative Council and transmit it to the Legislative Council for reconsideration.

If, however, the Bill is passed by the Legislative assembly for the second time, despite having certain delaying powers of Council, the Bill shall be deemed as passed. So, what we observe, that Legislative Council can delay the passage of a Bill for three months initially and second time for a month but ultimately, the will of the Legislative Assembly prevails.

Apart from that, since there is no provision of joint sitting to iron out differences between both houses, the will of Legislative Assembly ultimately prevails.

### ***Control over Executive***

As in the centre, the Council of Ministers headed by the Chief Minister is collectively responsible to the Legislative Assembly and not to the Council. The council has hardly any power to influence the governments except raising questions for its deeds or misdeeds.

### ***Legislative Assembly***

State Legislative Assembly is also known as popular chamber which consists of directly elected members from territorial constituencies. The number of Assembly members should not be more than 500 nor less than 60. However, after the creation of smaller states, the minimum number has been reduced in respect of some states like Sikkim, Arunachal Pradesh and Goa. At present, the biggest state Assembly is Uttar Pradesh and smallest is that of Sikkim having just 32 members. Moreover, provisions have been made to reserve seats for women, S.Cs and S.Ts in legislative Assemblies. Apart from that, Governor has the power to nominate one member from the Anglo-Indian community as he deems fit (Article 333).

### ***Tenure***

The tenure of state Legislative Assembly is 5 years as laid down in Article 172. It may be dissolved earlier also by the State Governor. Governors very often misused their authority at the direction of central government and imposed emergency under Article 356. In 1977, Janata Government imposed emergency in 9 Congress ruled states and when Congress came back to power it imposed emergency in 9 states where it was not in power. This could only be checked when in *S.R. Bommai v. Union of India* (1994) case, a 9 judge bench advised the government to follow the recommendation of Sarkaria Commission and avoid dissolution of state Assemblies. However, in case of proclamation of emergency, the period of the Assembly can be extended by the law of the Parliament for a period of one year at a time and not exceeding six months after the proclamation ceases to have effect. [Article 172(2)]

### ***The Speaker and the Deputy Speaker***

The Legislative Assembly of each state must choose from its members Speaker and the Deputy speaker (Article 178). They may also resign from their post if they cease to be member of the Assembly or may offer their resignation or if a resolution to this effect has been passed by a majority of the members of the Assembly. They preside over the meetings of the Legislative Assembly except when the process of their removal is under process.

### ***Powers and Functions of Legislative Assembly***

The Legislative Assembly of state is the most powerful house and it has wide array of Legislative, Executive and Financial powers. It makes laws on the subject mentioned in the state

list as well as Concurrent List. The powers of Legislative Council in this regard are very limited and at most it can delay the legislation. Under its executive power, Legislative Assembly, exercises control over the Council of Ministers headed by the Chief- Minister. The Council of Ministers is collectively responsible to the Executive for its policies and programmes. Apart from moving resolutions and motions, it can also move a no-confidence motion against the Government. By passing the no-confidence motion, the Assembly can bring down the Government. Legislative Assembly is also vested with the financial power and without its concurrence, no taxes can be levied, no appropriation can be made, no taxes can be introduced and money bill cannot be introduced. Finally, it also has power with regard to Constitutional amendment under article 356. Once, the bill is passed by the Parliament, it is referred to the states for ratification.

### ***Relations between the Two Houses of the State Legislature***

Normally speaking, the relation between two houses remains cordial and even in case of conflict, due to the strength of the Lower House, its will prevails. At the most, Legislative Council can only delay the passage of the bill and it is up to the Legislative Assembly to either incorporate the changes proposed by the Council or pass the Bill in its original form.

### ***Governor***

Governor is the formal head of the State executive and executive authority of the State is vested in him. He exercises his executive authority either directly or through officers subordinate to him. Chief –Minister and his Council of Ministers aid and advise him in discharging his duties. Normally, for each state Governor is appointed. However, under Article, 153 the same person may be appointed as Governor of two or more States. He also acts as a link between Centre and State and his role becomes very crucial when state is under President Rule. During emergency period, he applies his discretionary powers. Although, in some cases he looks as replica of the President at the Centre, however, unlike President, he is not merely a figurehead, but plays a very crucial role in smooth functioning of the Government.

While, the criteria of having Governors in each state being discussed in the Constituent Assembly, there was lot of confusion regarding their mode of selection. Originally, it was suggested that he should be directly elected. However, deadlock between Governor and Chief



Minister, it was finally decided to have nominated Governor. Similarly, there was also debate regarding appointing Governor as the head of the state in true spirit of parliamentary democracy or nominating him. However, it was, ultimately decided that he should be nominated by the Centre. The confusion that prevailed in determining the criteria to be followed in the appointment of the Governor surfaced because there was no precedence in British Parliamentary arrangement (from where, India borrowed the principle of Parliamentary democracy) to suggest that what norm should govern the functioning of the Governors. Finally, the Constitutional experts agreed that, he should act in a restrained manner under normal circumstances and apply his extraordinary authority, when situation goes out of hand.

### ***Appointment***

Article 153 lays down that there shall be a Governor for each State. However, the same person may be appointed as Governor for two or more states. The Governor is appointed as per the conditions laid down in Article 158 of the Indian Constitution. Sarkaria Commission has recommended that in order to maintain neutral and unbiased constitutional position of the Governor, someone who is detached figure and not intimately connected with politics be appointed as Governor. Generally, while appointing Governors in India, two conventions are followed.

- 1) The Governor is appointed from outside the State. However, there have been examples in the past when this convention was not followed.
- 2) Under normal circumstances, the States are consulted by the Centre before appointing Governors. However, this is often violated and more particularly if it is opposition ruled state then the chances of consultation is very minimal.

### ***Removal***

Governor is normally appointed for a period of 5 years or he may continue in his office till his successor takes over from him. He may also offer his resignation before expiry of his term on personal grounds or may be asked to resign if he fails to discharge his duties as per the Constitution. Although, the grounds for his removal by the President is not specified in the



Constitution. They may also be transferred to other States as it has happened on several occasions. Constitution remains silent on the issue of transfer of Governor.

### ***Powers and Functions of the Governor***

Unlike, President of India, Governors of States does not have military or diplomatic power which is normally granted to the Head of the State. However, he too, enjoys similar legislative, executive, judicial powers similar to that of President. The Governor is bestowed with various powers which may be bracketed into different categories.

1. Executive powers
2. Legislative powers
3. Financial powers
4. Judicial Powers
5. Discretionary Powers

### ***Executive Powers***

The Governor is the Chief Executive of the State and all the executive functions of the State are performed in the name of the Governor. Article 154 of the Indian Constitution has clearly stated that the Executive power of the state shall remain vested in the Governor. Governors in India have similar powers and responsibilities at the State level as that of the President of India at the centre. In discharging his duties and responsibilities, he is aided and advised by the Council of Ministers headed by the Chief- Minister, except where application of discretionary power by the Governor is required. Although, Governor appoints the Chief- Minister but his role is very limited in the sense that as long as Chief- Minister enjoys majority support, they can remain in office and also they are accountable to the State Legislature and not to the Governor. However, if the Governor feels that Chief-Minister has lost majority support, he may anytime ask him to prove his majority on the floor of the house within a specified period. Governor has power to dismiss even a State Government which has majority, if he feels that it is not working according to the provisions of the Constitution. Although, under normal circumstances, Governor and Chief- Minister works together and Chief-Minister always remains in touch with the Governor and briefs him about the major policy decisions of the Government. On the other hand,

Governor may ask for certain specific information from the Chief-Minister about certain specific issues. The Governor of the State has also the power to appoint the Advocate General of the State and he remains in office during the pleasure of the Governor.

### ***Legislative Powers***

Although, the Governor is not a member of the State Legislature, but he is an integral part of it and thus enjoys a variety of powers. For Example, he has the right to address the legislature and to send message to it. He also summons, prorogues [Art. 174(1)] and dissolves the State Legislature [Article 174(2) (b)]. He also addresses the first session of State Legislature after election and at the beginning of each new session. He may also send messages with respect to any bill to the House and House will consider the message. The Governor is also empowered to nominate a member of the Anglo-Indian community to the Legislative Assembly in case the community does not get adequate representation in the Legislative Assembly.

Another important power of the Governor is the power to give assent to the Bill passed by the State Legislature. A Bill cannot become an Act unless it gets assent of the Governor. He exercises wide ranging powers in this regard. For Example, he may either give his assent to any Bill or withhold his assent or reserve the Bill for the assent of the President (Article 200). Another important power of the Governor is to issue ordinances when the State Legislature is not in session (Article 213).

### ***Financial Powers***

The Governor of the State also enjoys limited financial powers as well. For example, a Money Bill can be introduced in the Legislative Assembly only on the recommendation of the Governor. The annual Budget is also presented with the recommendation of the Governor. The Contingency Fund remains at his disposal. However, in exercising his financial powers, he is advised by the Chief Minister.

### ***Judicial Powers***

Article 161 confers limited powers to the Governor to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the Executive power of the State

extends. The Governor is also consulted by the President while appointing Chief Justice and other Judges of the High Court.

### ***Discretionary Powers***

A discretionary power of Governor means the power of the Governor which he exercises as per his own individual judgment or without the aid and advice of the council of ministers. However, the Constitution has also vested him with the power to act as per his own discretion. During normal circumstances, he may act according to the aid and advice of the council of ministers, however, he may or may not act as per the advice of the council of ministers. Discretionary powers of the Governor may be divided into two parts.

- i) Specific Discretionary Powers
- ii) Circumstantial Discretionary powers

Specific Discretionary powers are the one which are specified and mentioned in the Constitution under which Governor may use his discretion. Circumstantial Discretionary powers are not defined by the Constitution. These are implied powers which are exercised by the Governor as per circumstances which may vary. Many a times, when Governor exercises this power, his role becomes controversial.

The Governors in Indian State are bestowed with wide amount of discretionary powers which makes their position very significant. Art. 163(1) clearly states that “There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is or under this Constitution required to exercise his function or any of them in his discretion. In the exercise of his discretionary power, Governor will not be required to act according to the advice of his ministers or even to seek their advice. The clause 2 of the same Article further says that.... Anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion. Constitution has not elaborated in detail the discretionary powers of the Governor and therefore it is said that the power to decide his discretion is itself a discretionary power of the Governor.

Some of the discretionary powers of the Governor are: Dismissal of the ministry, imposition of President’s rule, withholding of a bill etc. Under Article 356, the Governor may also

recommend to the President for the imposition of the President's rule in the state if he feels that there is complete breakdown of the Constitutional machinery. And the state cannot be carried on in accordance with the Constitutional provisions. He may also dismiss the state government and dissolve the Legislative Assembly.

The Governor applies his discretionary powers if any Bill passed by the state legislature contravenes with constitutional provisions or may not be in the national interest. He may reserve such Bills for the consideration of the President. Similarly, the Governor may exercise his discretion, if he is convinced that state government is indulged in anti-national activities, which may pose threat to national security.

Another discretionary power of the Governor is enshrined in the Article 175(1) of the Constitution, which envisages that Governor can address either house of the State Legislature either together or separately. Conventionally speaking, the address of the Governor is prepared by the party in power and it contains apart from other issues, political agenda of the ruling party. Hence, it raises the question that whether Governor can refuse to read such address drafted by the ruling party or decline to do so. The normal opinion in this regard is that he may exercise his discretion and avoid reading such objectionable portion of the speech.

The application of discretionary powers by the Governor, especially in favour of the party in power at the centre and contrary to the interest of the ruling party of the state has created bitter animosity in centre-state relations. In order to check the abuse of authority by the Governor, in the famous Bommai case the Hon'ble Supreme Court delivered its landmark judgment, stating that the state Legislative Assembly will not be dissolved and kept in suspended animation till the issue gets finally resolved by the Court.

Thus, we see that Governor enjoys considerable amount of power in Indian political system and plays a key role in centre-state relations. Unfortunately, due to the partisan role of some of the state Governors, the strain has developed in centre-state relations. Although, it has been observed that in the era of coalition politics, this tendency has been curtailed to a very great extent. In order to further improve the relation between two federal units, the recommendation of the Sarkaria Commission need to be adhered. It recommended that, active politicians should

not be appointed as state Governors and Chief Minister should be consulted before appointing the Governor.

The office of the Governor is very crucial as he has to play a very significant role in the governance of the state. The problem occurs when Governor begins to act under the dictation of the central government. Being a Constitutional head, it is expected from the Governor that he would act in a reasonable and rational manner even while exercising his discretionary authority and moreover, he must have materials to sustain his judgment. Otherwise, the Constitution would have to be credited with granting its approval to malafide and unreasonable exercise of discretionary power by the Governor.

### ***Chief Minister***

Similar to the pattern followed in parliamentary system of governance at the state level, the Constitution provides for the office of the Chief Minister to be the real executive authority of the state. Being head of the Government, he runs the affairs of the government in consultation with the Governor. He remains in office as long as he enjoys the support of the majority members of the state legislature. The Chief- Minister under Indian political system is expected to perform wide ranging powers. However, our founding fathers were initially more concerned with maintaining national unity and therefore put fetters on the powers of Chief Minister by granting discretionary powers to Governor. Although, under normal circumstances, generally the role of Governor is very limited, however, it has been observed that even when Chief Minister had majority support in the house, the Governors did make effort to dislodge the state government. Of late, this practice has somewhat diminished due to the coalition nature of the political system and presence of strong and popular regional government.

Generally, the simple Constitutional arithmetic is that the leader of the majority party is invited by the Governor to form the government. However, in reality many factors play a determining role in the appointment of Chief Minister. For example, in case of national parties, the selection of Chief Minister is made by the high command than by the elected members of the state legislative assembly.

Similarly, in matters of removal of Chief Minister, the Constitution states under Article 164(2) that Chief Minister holds office during the pleasure of the Governor which in practice, means

having majority support in the state legislature, thereby neutralizing the role of the Governor in playing an activist role. In practice, however, it is the party in power at the centre misuses its authority and literally forces the Governor to act as the agent of the centre or otherwise face the music and that is the reason that Article 356 is the most abused and misused articles of the Constitution which is strongly criticized by those who are advocates of state autonomy.

### ***Powers and Functions of the Chief Minister***

Being real head of the Government, Chief Minister is bestowed with many powers and responsibilities. They are as follows:

- i) According to Article 163, there shall be a Council of Ministers with Chief Minister as its head to aid and advice the Governor in the exercise of his functions except in the cases where Governor acts in his own discretion.
- ii) He selects his cabinet colleagues and also allocates portfolios to them. He is authorized to reshuffle his cabinet anytime and may drop any minister from his cabinet.
- iii) Chief Minister presides over the meeting of his cabinet and also co-ordinates the activities of the various ministries.
- iv) Chief Minister also communicates the Governor regarding all the decisions of the Council of Ministers. He acts as a channel of communication between Governor and his Council of Ministers. He also acts as a link between the legislature and his ministers.
- v) The sessions of the Legislative assembly are summoned and prorogued by the Governor on the advice of the Chief Minister.
- vi) The Chief Minister may tender his resignation any time and then advise the Governor to dissolve the Legislative Assembly even if its term has not expired. He may also recommend for President rule. However, it is up to the Governor to accept such advice or not.
- vii) All the Bills have prior approval of the Chief Minister, before being introduced in the Legislative Assembly and he also ensures that it gets passed in the Legislative Assembly.



### *Position of the Chief Minister*

The position of the Chief Minister is similar to that of the Prime Minister at the central level although his area of activities remains confined to his state. The chief minister in the state exercises real authority in selecting his cabinet colleagues and allocating portfolio to them. He presides over the meeting of the cabinet and is the chief spokesperson of the Government. Besides discharging day to day activities of the government, Chief Minister also acts as a bridge between State Legislature, The Council of Ministers and the Governor. Chief Minister performs various roles as the head of the government which are as follows.

Being head of the Government, he presides over the meetings of the Cabinet, keeps the Governor informed about the developments in the state, initiates welfare policies for the state, allocates portfolios to the ministers, keeps check on their activities, interacts with Union Government and various ministries and demand money for the various policies and programmes. He may also tender his resignation at any time, and may ask the Governor to dissolve the House. It is up to the Governor to accept such advice or not.

Although, the Powers and responsibilities of the Chief Minister are well defined in the Constitution, in actual practice, it depends on various factors. For example, the position of a Chief Minister heading a coalition government or belonging to a national party is distinct from the position of a Chief Minister belonging to a regional political party owing to the functional space available to them. Various leaders of regional political parties like Nitish Kumar, Karunanidhi, Jaylalita, Naveen Patnaik, Mulayam Singh, Mayawati etc. wields enormous clout. The strong position of the Chief Minister helps him in various ways like selecting his cabinet colleagues to providing stable government in the state. Earlier, many Chief Ministers, in order to accommodate various groups used to have unwieldy cabinet but after 91<sup>st</sup> Constitutional amendment a ceiling has been fixed, limiting their size of the ministries to 15 per cent of the total strength of the State Legislative Assembly.

Chief Minister is also concerned with the welfare of the state government and in this regard he has to maintain regular and smooth contact with the central Government. Chief Ministers pay regular visit to New Delhi and interacts with various ministries of the Government so that various developmental activities in the state could be initiated. Chief Ministers pays visit to



Planning Commission and meet the Chairman and apprise him about the various financial requirement of the state and seek fund for that.

Thus, we see that position of the Chief Minister is very crucial in the governance of the state. Many states that were lagging far behind have surged ahead because of the presence of an able and visionary Chief Minister. The example of Bihar, Gujarat can be cited in this regard.

### ***Conclusion***

The above discussion clearly reflects that in order to understand India's federal democratic structure the holistic understanding of the structure and functions of the executive in state is urgently required. Although, it is patterned on the similar model that prevails at Union level, the discretionary powers of the Governor and the controversy associated with it makes it somewhat different from the Union Government. The success and failure of the state Government largely depends on the understanding between Governor and Chief- Minister. It has been observed that on most occasions, it is not the Constitutional provisions that create obstacles in smooth functioning of the Government, but due to lack of understanding between Governor and Chief Minister and interference by the Central Government, the smooth functioning of the government gets affected. For the smooth and successful functioning of democracy at the state level, proper co-ordination between these institutions are urgently required.

