



13

EXECUTIVE IN THE STATES

You have already studied that India is a union of 28 States and 7 Union Territories and that the Founding Fathers of the Indian Constitution adopted a federal system. The executive under a system is made up of two levels: union and states. You have learnt in Lesson No.10 about the Union Executive.

At the State level, generally following the central pattern, the Governor, like the President, acts as a nominal head and the real powers are exercised by the Council of Ministers headed by the Chief Minister. The members of the Council of Ministers at the State level are also collectively and individually responsible to the lower House of the State Legislature for their acts of omission as well as commission.



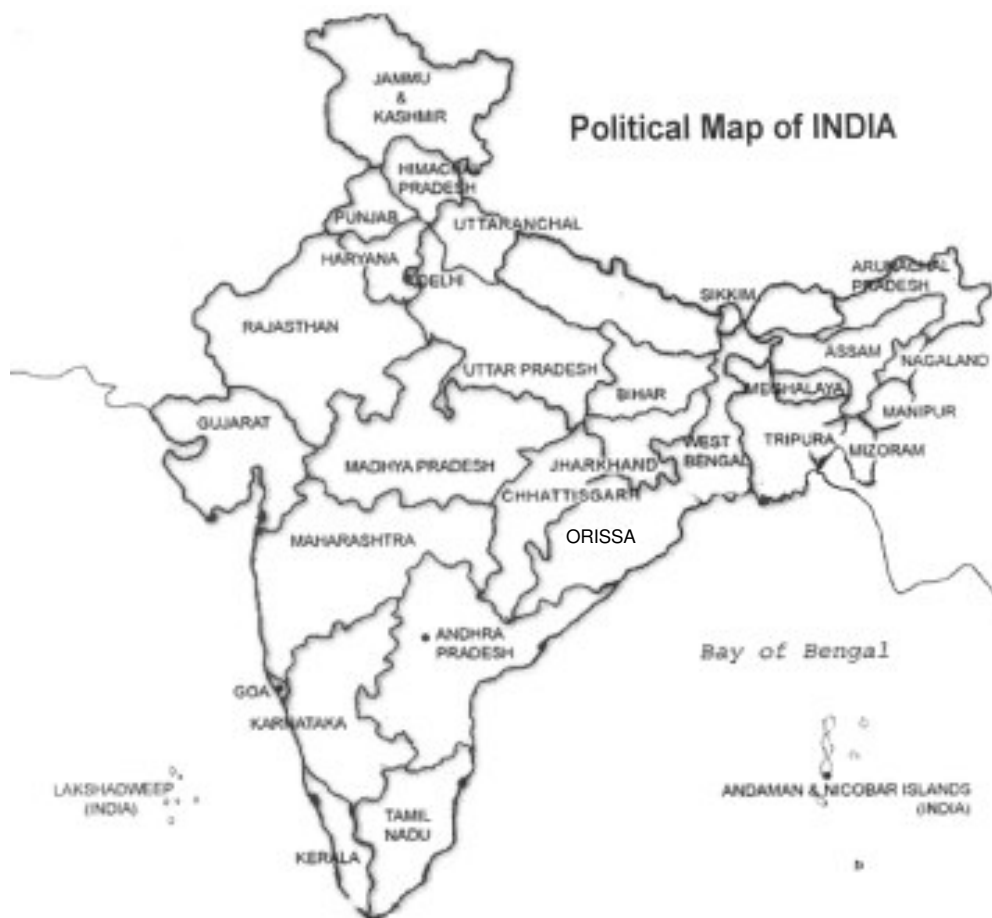
Objectives

After studying this lesson, you will be able to

- recall the method of appointment of the Governor;
- explain the qualifications, tenure and privileges of the Governor;
- describe the powers of the Governor including his discretionary powers;
- assess the role and position of the Governor;
- recall the election/ appointment of the Chief Minister;
- describe the appointment of the Council of Minister's and how it is formed;
- explain the powers and functions of the Chief Minister and the Council of Ministers;
- analyse the relation between the Governor and the Council of Ministers at the State level.



Notes



13.1 The Governor

According to the Constitution of India, there has to be a Governor for each State. If need be, one person may be appointed Governor for even two or more States. The executive authority of every State is vested in the Governor of the state. He/She may exercise the same, directly or through the officers subordinate to him.

13.1.1 The Governor : Appointment, Qualifications, Tenure etc.

The Governor of a State is appointed by the President of India. There is no bar on re-appointment of a Governor either in the same State or in different States. This shows that the Governor is not elected but is appointed. In order to become a Governor a person must have following qualifications:

1. He/she must be a citizen of India;
2. He/she should be at least 35 years; and
3. He/she cannot hold any office of profit during his tenure.

However, if a person is a member of either House of the Parliament or the Legislature of any State or a member of the Council of Ministers at the National or the State level and is appointed as Governor, he/she ceases to be a member of the Legislature or the Council of Ministers.



The Governor is appointed for a term of five years but normally holds office during the pleasure of the President. He/she may resign before the expiry of the term or may be removed by the President earlier. As a matter of fact while appointing or removing the Governor the President goes by the advice of the Prime Minister. He/she is entitled to a rent-free residence which is called Raj Bhawan. His/her emoluments, allowances and privileges are specified by the law. However, the emoluments and allowances of the Governor cannot be reduced during his tenure.

13.1.2 The Governor: Powers, Position and Role

The powers and functions of the Governor can broadly be categorised under two heads namely (a) as the head of the State, and (b) as the representative of the Union Government. Under the head of the State you will study his/her executive, legislative, financial as well as the power to grant pardon. We will first of all study these powers of the Governor:

(A) *Executive Powers*

All the executive functions in the State are carried on in the name of the Governor. He/she not only appoints the Chief Minister but on his/her advice appoints the members of the Council of Ministers. According to a well established convention he/she calls the leader of the majority party or an alliance of parties (if no single party in the Legislative Assembly gets majority) to form the Government. On the advice of the Chief Minister he/she allocates portfolios among the ministers.

He/she appoints the Advocate- General and Chairman and members of the State Public Service Commission.

He/she has the power to appoint judges of the courts, other than the High Court. He/she, however, is consulted when the judges of the State High Court are appointed by the President of India.

While discharging all his/her functions as Head of the Executive in the State, the Governors like the President, is aided and advised by the Council of Ministers headed by the Chief Minister.

(B) *Legislative Powers*

The Governor is an inseparable part of the State Legislature and as such he/she possesses certain legislative powers as well.

The Governor has the right to summon and prorogue the State Legislature. He/she can, on the recommendation of the Council of Ministers headed by the Chief Ministers dissolve the State Legislative Assembly.

He/She can address the session of the State Legislative Assembly or Joint Session of the two Houses of the Legislature. He can send messages to either or both Houses.

He/She can nominate one member of the Anglo Indian Community to the State Legislative Assembly, if he/she is satisfied that after General Elections, the said community is not adequately represented in the Assembly (for details regarding the State Legislature please see Lesson No. 14).

He/she nominates one-sixth members of the total strength of the Legislative Council if the same is existing in a State. Such nominated members are those who possess special knowledge in the field of literature, science, cooperative movement and social service.



The assent of the Governor is necessary for a bill to become a law. In this regard, the Governor has the following options :

- (a) He/she may give assent to the bill; in that case the bill becomes a law;
- (b) He/she may withhold the assent; in which case the bill fails to become a law;
- (c) He/she may return the bill with his message. If the State Legislature passes the bill in its original shape or in a modified form, the Governor has to give the assent to the bill;
- (d) He/she may reserve the bill for the consideration of the President.

The Governor has the power to issue ordinances during the period when the State Legislature is not in session. However, the ordinance has to be placed before the State Legislature when it reassembles for the next session. It ceases to operate after six weeks, unless earlier rejected by the Legislature. The Legislative Assembly may replace the ordinance by a law enacted by it within the said period.

The legislative powers, like the executive powers, of the Governor are, in practice exercised by the State Council of Ministers, headed by the Chief Minister.

(C) Financial Powers

1. No money bill can be introduced in the State Legislative Assembly without the prior permission of the Governor.
2. The annual and supplementary budgets are introduced in the Assembly in the name of the Governor.
3. The Governor has the control over the State Contingency Fund.

(D) Power of Pardon

The Governor possesses the power to grant pardon reprieves, respites or remission of punishment or to suspend, remit or commute the sentence of any person convicted by the Courts of any offence against any law relating to a matter to which the executive power of the State extends.

(E) Discretionary Powers

As has been stated earlier that while exercising the executive, legislative, financial and judicial powers the Governor is aided and advised by the Council of Ministers headed by the Chief Minister. These powers are enjoyed by him/her as the Head of State. There are a few more powers which he/she possesses as the representative of the Central or Union Government. These powers are also called discretionary powers. It is under special circumstance that the Governor may act without the advice of the Council of Ministers. In other words, such powers of the Governor are exercised in his/her own discretion. They are:

1. A situation may arise when in the opinion of the Governor there is the breakdown of the constitutional machinery in the State. In such a case, the Governor may report the situation to the President for imposition of the President's Rule in that State. As the Governor exercises this power on his/her own, it is called the discretionary power of the Governor. In case the Governor's report is accepted by the President, and he/she proclaims emergency under Article 356, the State Council of Ministers is removed, and the State Legislative Assembly is either dissolved or put under suspension. During

such emergency, the Governor rules on behalf of the President.

2. A situation may also arise when the Governor may reserve a bill for the consideration of the President. As the Governor does or can do this job on his own, it again is one of his discretionary powers.

The discretionary powers of the Governor were meant for extraordinary and emergency situations. However, in practice these have not only been used in such situations, but have been made use of relating to normal powers in controversial manner. This has led to creating tension between Union and State relations.



Notes



Intext Questions 13.1

Choose the correct answer from the alternatives given below:

1. Who appoints the Governor of the State?
 - (a) The President
 - (b) The Vice President
 - (c) The Prime Minister
 - (d) The Chief Justice of India
2. The Governor is appointed for a term of :
 - (a) Four years
 - (b) Five years
 - (c) Six years
 - (d) Seven years
3. The Chief Minister, along with the State Council of Ministers, is collectively responsible to:
 - (a) The Legislative Assembly
 - (b) The Legislative Council
 - (c) The Governor of the State
 - (d) The President of India
4. An ordinance, in the State, is issued by :
 - (a) The Governor
 - (b) The State Home Minister
 - (c) The Chief Minister
 - (d) The President of India
5. The Governor can dissolve the State Legislative Assembly on the recommendation of :

- (a) Home Minister of the State
- (b) Chief Justice of the High Court
- (c) The Council of Ministers headed by the Chief Ministers
- (d) Advocate-General of the State

13.1.3 Position and Role of the Governor

After looking at the list of powers enumerated, you must be feeling that the Governor of a State is a very powerful person. In a parliamentary system, as you know, the Council of Ministers is responsible to the legislature and therefore, the real powers are exercised by it and not the Governor. He/she, like the President, has to act according to the advice of the Council of Ministers, headed by the Chief Minister. Hence, the Governor ordinarily has to act as a constitutional or ceremonial head.

However, under extraordinary situations, the Governor gets an opportunity to exercise his/her authority according to his/her discretion. Since the 1967 General Elections, when several States opted for Samyukta Vidhayak Dal (SVD) governments, due to the discretionary powers, the office of the Governor has become quite controversial. The Governors have acted according to their whims and on certain occasions have tried to please the ruling party at the National Government level. According to the constitutional experts, the Governor's role in three respects i.e. recommending to the President for the proclamation of emergency; appointing a Chief Minister in case no party gets a clear majority and deciding the fate of the Chief Minister in case of intra-party defections, has become very controversial. The deterioration in the political standards and practices that has come about in the wake of multi-party ministries in many of the States, party rivalries, political defections and fragmentation of the political parties has been at the root of these controversies. Suggestions and recommendations of the Administrative Reforms Commission as well as of Sarkaria Commission have remained only on paper, in spite of the fact that these recommendations would help in minimising partiality on the part of the functioning of the Governors.

13.2 The Chief Minister

Each State has a Council of Ministers to aid and advise the Governor in the exercise of his functions. Chief Minister is the head of the government in the State. The Council of Ministers with the Chief Minister as its head exercises real authority at the State level.

13.2.1 Formation of the Council of Ministers

The Chief Minister is appointed by the Governor. The person who commands the majority support in the State Legislative Assembly (Vidhan Sabha) is appointed as the Chief Minister by the Governor. The other Ministers are appointed by the Governor on the advice of the Chief Minister. The ministers included in the Council of Minister's must belong to either House of the State legislature. A person who is not a member of the State legislature may be appointed a minister, but he/she ceases to hold office if he/she is not elected to the State legislature within six months of his appointment. The portfolios to the members of the Council of Ministers are allocated by the Governor on the advice of the Chief Minister.



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13.2.2 Functions of the Chief Minister

Chief Minister is the head of the Council of Ministers of his State. The constitutional position of the Chief Minister is more or less similar to that of the Prime Minister. The Chief Minister plays an important role in the administration of the State. We can discuss his functions as follows:

1. Chief Minister is the real head of the State Government. Ministers are appointed by the Governor on the advice of the Chief Minister. The Governor allocates portfolios to the ministers on the advice of the Chief Minister.
2. Chief Minister presides over the Cabinet meetings. He/she coordinates the functioning of different ministries. He/she guides the functioning of the Cabinet.
3. Chief Minister plays a key role in framing the laws and policies of the State Government. Bills are introduced by the ministers in the State legislature with his/her approval. He/she is the chief spokesman of the policies of his government both inside and outside the State Legislature.
4. The Constitution provides that the Chief Minister shall communicate to the Governor all decisions of the Council of Ministers relating to the administration and the affairs of the State and proposals for legislation.
5. The Chief Minister furnishes such information relating to the administration of the affairs of the State and proposals for legislation as the Governor may call for.
6. If the Governor so requires, the Chief Minister submits for consideration of the Council of Ministers any matter on which a decision has been taken by a minister but which has not been considered by the Cabinet.
7. The Chief Minister is the sole link of communication between the Cabinet and the Governor. The Governor has the right to be informed by the Chief Minister about the decisions taken by the Council of Ministers.

The above functions show that the real authority is vested with the Council of Ministers headed by the Chief Minister. The Council of Ministers is the real executive in the State. The position of the State Council of Ministers largely depends upon the strength of the ruling party in the State Assembly and the personality of the Chief Minister. The position of the Chief Minister is more powerful when his party is in power in the Centre as well. As long as the Chief Minister and his Council of Ministers enjoy the confidence of majority in the Legislative Assembly, he exercises the real executive power in the State.

13.3 Relationship of the Governor with the Chief Minister

The Governor is the constitutional head of the State. All executive actions in the State are taken in his name. The Governor appoints the Chief Minister and on the advice of the Chief Minister he appoints other ministers. The Governor is responsible for smooth running of the State administration. It is his/her duty to see that the State administration is carried on in accordance with the provisions of the Constitution. If he/she finds that the constitutional machinery of the State has broken down or the administration cannot be carried on in accordance with the provisions of the Constitution, he/she may recommend to the Union Government to proclaim emergency in the State. The Governor in his/her report can advise

Structure of Government



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the President to impose President’s Rule in the State. If the President is satisfied, he/she will declare emergency under Article 356, popularly known as President’s Rule in the State. After proclamation, the State comes under the control of the Centre and the Governor acts as the Centre’s agent. The Council of Ministers is dismissed and Assembly (Vidhan Sabha) is dissolved or suspended.

The Constitution provides that there shall be a Council of Ministers with the Chief Minister as its head to aid and advise the Governor in the exercise of his functions, except when he/she is required by the Constitution to act on his discretion. When the Chief Minister enjoys the confidence of the majority in the State legislature, then the Governor’s capacity to exercise his/her discretionary powers is reduced. In such a situation the Chief Minister is the real head of the State administration and the Governor is the constitutional head. So we see that the Governor plays a dual role. As the constitutional head of the State, he/she acts on the advice of the Council of Ministers and also serves as the agent of the Central Government. The relations between the Governor and the Chief Minister are influenced by the political and constitutional conditions in the State. In normal conditions, the Governor is the ceremonial head of the State but during the President’s Rule he/she becomes the agent of the Centre and assumes control of the State administration. Keeping the spirit of the Constitution in mind, the Governor may in a sense be the “eyes and ears” of the Central Government and as he/she is appointed, removed or transferred by the Centre he continues to be subservient to Centre as well as the party in power there. It may be emphasised that the job of the Governor would not be merely that of an umpire to see that the game is played according to the letter and spirit of the Constitutional provisions.



Intext Questions 13.2

1. Answer the following Questions:

- (a) How is the Chief Minister appointed?
.....
- (b) Who selects the ministers for appointment in the State?
.....

2. Select the appropriate words from the brackets () and fill in the blanks:

- (a) The Governor appoints the ministers on the advice of the
.....
(Prime Minister, Chief Minister, Vice-President)
- (b) The State Cabinet meetings are presided over by the
.....
(Governor, Speaker, Chief Minister)
- (c) The Council of Ministers is responsible to the
.....
(Governor, Chief Minister, Legislative/Assembly)



(d) The Chief Minister is :

.....

- (i) The nominal head of the State
- (ii) The real head of the State
- (iii) The nominal head of the Government
- (iv) The real head of the Government



What You Have Learnt

The Head of the State is Governor who is approved and appointed by the President on the recommendation of the Union Cabinet. His/her tenure is of five years but can be removed from his office even prior to the expiry of the term.

He/She also exercises legislative, financial, judicial and discretionary powers. He/She performs his/her functions as the executive head but is guided and advised by the Council of Minister's headed by the Chief Minister.

The discretionary powers which he/she exercises have made him/her a controversial person. Efforts have been made by Administrative Reforms Commission and Sarkaria Commission to make him/her impartial but nothing concrete has come out.

The Chief Minister is the real head of the Government at the State level. The Governor appoints the Chief Minister. The person who commands the support of majority in the State Legislative Assembly is appointed as the Chief Minister by the Governor. Other Ministers are appointed by the Governor on the advice of the Chief Minister. The Chief Minister presides over the Cabinet meetings. He/she lays down the policies of the State Government. He/she is the sole link between his ministers and the Governor. He/she Coordinates the functioning of different ministries.

During normal times, the Governor exercises his/her powers on the advice of the Chief Minister but when there is a breakdown of constitutional machinery in the State, the Governor advises the President to proclaim constitutional emergency in his discretion. He/she administers the State, during constitutional emergency, on behalf of the President.



Terminal Exercises

- Q 1. How is Governor appointed?
- Q 2. What powers are exercised by the Governor?
- Q 3. Does the Governor have any discretionary powers ? Mention his/her discretionary powers?
- Q 4. What is the position and role of the Governor?
- Q 5. How is the Council of Ministers formed in a State?
- Q 6. Describe the functions of the Chief Minister?

Q 7. Explain the relationship of the Governor with the Chief Minister?

**Answers to Intext Questions****13.1**

1. The President
2. Five Years
3. The Legislative Assembly
4. The Governor
5. The Council of Ministers headed by the Chief Minister.

13.2

1. (a) By the Governor; he appoints leader of the majority party, or combination of parties, in Legislative Assembly.
(b) The Chief Minister.
2. (a) Chief Minister
(b) Chief Minister
(c) Legislative Assembly
(d) The real head of the Government.

Hints for Terminal Exercises

- Q 1. Refer to Section 13.1.1
Q 2. Refer to Section 13.2
Q 3. Refer to Section 13.1.2
Q 4. Refer to Section 13.1.3
Q 5. Refer to Section 13.3
Q 6. Refer to Section 13.3.1
Q 7. Refer to Section 13.3.2
Q 8. Refer to Section 13.4

**Notes**