

State Executive - Governor of State, Article 153 to 158

Executive

The term 'Executive' has been defined both in its broad and narrow forms. In its broad form, it is taken to mean all the functionaries, political power-holders (Political Executive) and permanent civil servants who undertake the execution of laws and policies and run the administration of state.

- In its narrow form, it is taken to mean only the executive heads (ministers i.e. the political Executive), who head the government departments, formulate the policies and supervise the implementation of the laws and policies of the government. In the narrow form, the civil service and its administrative functions are not included in the realm of the Executive.
- Traditionally, only the narrow meaning used to be accepted by the political scientists. However, in modern times, the executive is defined in its broader form and it covers both the Political Executive as well as the Civil Service.

Article 153 {Governors of States}

There shall be a Governor for each State:

Provided that nothing in this article shall prevent the appointment of the same person as Governor for two or more States.

Article 154 {Executive power of State}

1. The executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through offices subordinate to him in accordance with this Constitution.
2. Nothing in this article shall -
 - a. be deemed to transfer to the Governor any functions conferred by any existing law on any other authority; or
 - b. prevent Parliament or the Legislature of the State from conferring by law functions on any authority subordinate to the Governor.

Article 155 {Appointment of Governor}

The Governor of a State shall be appointed by the President by warrant under his hand and seal.

Article 156 {Term of office of Governor}

1. The Governor shall hold office during the pleasure of the President.
2. The Governor may, by writing under his hand addressed to the President, resign his office.
3. Subject to the foregoing provisions of this article, a Governor shall hold office for a term of five years from the date on which he enters upon his office: Provided that a Governor shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

Article 157 {Qualifications for appointment as Governor}

No person shall be eligible for appointment as Governor unless he is a citizen of India and has completed the age of thirty-five years.

Article 158 {Conditions of Governor's office}

1. The Governor shall not be a member of either House of Parliament or of a House of the Legislature of any State specified in the First Schedule, and if a member of either House of Parliament or of a House of the Legislature of any such State be appointed Governor, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as Governor.
2. The Governor shall not hold any other office of profit.
3. The Governor shall be entitled without payment of rent of the use of his official residences and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule. (3A) Where the same person is appointed as Governor of two or more States, the emoluments and allowances payable to the Governor shall be allocated among the States in such proportion as the President may by order determine.
4. The emoluments and allowances of the Governor shall not be diminished during his term of office.

Article 159 {Oath or affirmation by the Governor}

Every Governor and every person discharging the functions of the Governor shall, before entering upon his office, make and subscribe in the presence of the Chief Justice of the High court exercising jurisdiction in relation to the State, or,

in his absence, the senior most Judge of that Court available, an oath or affirmation in the following form, that is to say - "I, A.B., do Swear in the name of God / solemnly affirm that I will faithfully execute the office of Governor (or discharge the functions of the Governor) of (name of the State) and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well-being of the people of (name of the State)."

Article 160 {Discharge of the functions of the Governor in certain contingencies}

The President may make such provision as he thinks fit for the discharge of the functions of the Governor of a State in any contingency not provided for in this Chapter.

Article 161 {Power of Governor to grant pardons, etc., and to suspend, remit or commute sentences in certain cases}

The Governor of a State shall have the power 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.

Article 162 {Extent of executive power of State}

Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws:

Provided that in any matter with respect of which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof.

Article 163 {Council of Ministers to aid and advise Governor}

1. 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 function, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.
2. If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and

the validity of 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.

3. The question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any court.

Article 164 {Other provisions as to Ministers}

1. The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister, and the Minister shall hold office during the pleasure of the Governor: Provided that in the States of Bihar, Madhya Pradesh and Orissa, there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the Scheduled Castes and backward classes or any other work.

2. The Council of Minister shall be collectively responsible to the Legislative Assembly of the State.

3. Before a Minister enters upon his office, the Governor shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule.

4. A Minister who for any period of six consecutive months is not a member of the Legislature of the State shall at the expiration of that period cease to be a Minister.

5. The salaries and allowances of Ministers shall be such as the Legislature of the State may from time to time by law determine and, until the Legislature of the State so determines, shall be as specified in the Second Schedule.

Article 165 {Advocate-General for the State}

1. The Governor of each State shall appoint a person who is qualified to be appointed a Judge of a High Court to be Advocate-General for the State.

2. It shall be the duty of the Advocate-General to give advice to the Government of the State upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the Governor, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.

3. The Advocate-General shall hold office during the pleasure of the Governor, and shall receive such remuneration as the Governor may determine.

Article 166 {Conduct of business of the Government of a State}

1. All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.

2. Orders and other instruments made and executed in the name of the governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

3. The Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion.

Article 167 {Duties of Chief Minister as respects the furnishing of information to Governor, etc.}

It shall be the duty of the Chief Minister of each State -

- a. to communicate to the Governor of the State all decision of the Council of Ministers relating to the administration of the affairs of the State and proposals for legislation;
- b. to furnish such information relating to the administration of the affairs of the State and proposals for legislation as the Governor may call for; and
- c. if the Governor so requires, to submit for the consideration of the Council of Ministers any matter of which a decision has been taken by a Minister but which has not been considered by the Council.

Who is a Governor?

Governor is a nominal executive head of the state. He forms an important part of the state executive where he acts as the chief executive head. Central Government nominates the governor for each state.

How is a Governor Appointed?

The Indian President appoints Governor for each state by warrant under his hand and seal. Central Government is responsible to nominate the governor for each state.

Note:

- Unlike elections of the President, there is no direct or indirect election for the post of Governor.

- The office of a governor is not a part of the union executive and is an independent constitutional office. The governor doesn't serve the union government and neither is subordinate to it.
- The nomination of a governor by the Union and his appointment by the President in India is based on the Canadian model of government.

Qualifications for the Governor

- 1. He must be a citizen of India
- 2. He must not be less than the age of 35 years.
- 3. He must not be a member of the Parliament or of any State Legislature.
- 4. He must not be holding any office of profit.

Conditions of Governor's office.—

(1) The Governor shall not be a member of either House of Parliament or of a House of the Legislature of any State specified in the First Schedule, and if a member of either House of Parliament or of a House of the Legislature of any such State be appointed Governor, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as Governor.

(2) The Governor shall not hold any other office of profit.

(3) The Governor shall be entitled without payment of rent to the use of his official residences and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.

(3A) Where the same person is appointed as Governor of two or more States, the emoluments and allowances payable to the Governor shall be allocated among the States in such proportion as the President may by order determine.

(4) The emoluments and allowances of the Governor shall not be diminished during his term of office.

State Executive - Term of Governor, Oath, Power of Governor and Article 164, 165, 167, 213

Term of office of Governor. —

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(2) The Governor may, by writing under his hand addressed to the President, resign his office.

(3) Subject to the foregoing provisions of this article, a Governor shall hold office for a term of five years from the date on which he enters upon his office:

Oath or affirmation by the Governor.

Every Governor and every person discharging the functions of the Governor shall, before entering upon his office, make and subscribe in the presence of the Chief Justice of the High Court exercising jurisdiction in relation to the State, or, in his absence, the senior most Judge of that Court available, an oath or affirmation in the following form, that is to say

Important Powers/ Functions of the Governor

Executive

1. Appointment of:
 - Chief Minister, other ministers (on the recommendation of the Chief Minister),
 - Advocate General of state, State Election Commissioners, chairman and members of state public service commission,
 - Tribal Welfare minister in Chhattisgarh, Madhya Pradesh, Jharkhand and Odhisa
2. Recommends imposition of constitutional emergency in the state

Legislative:

- Summon, prorogue or dissolve the state legislature
- Provide assent to bill
- Issue of ordinance
- Nominate- 1/6th member of the state legislative council and 1 member to state legislative assembly of Anglo-Indian community.