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WHAT IS STATE EXECUTIVE ?

The State Executive represents the Executive branch of any State. The main work of the Executive is to execute and Implement the laws and regulations throughout the state. The State Executive consists of the Governor and The Council of Ministers having the Chief Minister as the Head of the State. The President of our country appoints the Governor for a tenure of 5 years and the Governor holds his office during the pleasure of The President. Only those Indian Citizens who have crossed the age of 35 years and above are eligible for the appointment in the Office.

CHIEF MINISTER

As we all know that the Governor is the de jure head of the state but the de facto executive authority is with the Chief Minister of the State, So the real executive of the Government is the Chief Minister not the Governor.

In **Article 164** of the Constitution of India it has been stated that the Chief Minister shall be appointed by the Governor and all the other ministers has to be appointed with the suggestion of the Chief Minister and all the ministers shall hold the office during the pleasure of the Governor. There are no limits at how many times a Chief Minister can serve. When the Chief Minister leads the state a Deputy Chief Minister can be appointed from the one of the Council of Ministers.

After the abolition of **Article 370**¹ from the Constitution of India, now the number of states remained only 8 and the number of union territories increased to 9. Now there are 3 Union Territories which have Bicameral Legislative Assemblies and they are Delhi, Puducherry and now a new addition to both of them Jammu & Kashmir.

APPOINTMENT OF CHIEF MINISTER

¹ **Article 370** in The Constitution of India 1949, Temporary provisions with respect to the State of Jammu and Kashmir, May 11th 2020, 10:54 AM, <https://indiankanoon.org/doc/666119/>
Prem Nath Kaul v. J&K (1959), Sampat Prakash v. J&K (1968), Mohd. Maqbool Damnoo v. J&K (1972), SBI v. Santosh Gupta (2016)

Nowhere in the Constitution of India it has been mentioned about the Qualification to be appointed as a Chief Minister of the State but in **Article 164** of the Constitution of India it has been mentioned that the *Governor should appoint the Chief minister*. But this doesn't mean that *Governor can appoint² anyone* as a Chief Minister of a State or Union Territory whosoever he likes to appoint so.

In real life practise No real choice is open to the Governor because after the general elections of the State Legislative Assembly, Those party or Coalition Group which secured majority in the House, they elect their leader and forward the Name of the elected representative to the Governor and after that Governor appoints that elected person as the Chief Minister of the State or Union Territory and the Governor also asks him about the *formation of the Council of Ministers³*.

When none of the parties get a clear majority in the State Legislative Assembly then the Governor asks the leader of the Single Largest party at that time to form the Government. In most of the cases it has been seen that *If the Single party present there is not having the majority⁴ in the State Legislative Assembly*, then the option left is of forming a coalition government by combing 2-3 parties together or by merging the parties, after the coalition is formed then this group elects its one of the member to lead the state and in the same manner the name is to be communicated to the Governor who invites him to form the Government.

TENURE OF CHIEF MINISTER

The Office is held by the Chief Minister during the pleasure of the Governor. But in the actual scenario the Chief Minister remains in the office as long as he continues to be the leader of the majority in the State Legislative Assembly.

The Chief Minister can be dismissed by the Governor in case he lost the support of the majority. The State Legislative assembly can also remove the Chief Minister by passing a vote of no-confidence motion against him. The Vote of no-confidence motion has to be also taken against the entire Council of Ministers to resign with the Chief Minister.

² Sukumaran v. Union of India (AIR 1987 Ker 212)

³ Dattaji Chirandas v. the State of Gujarat, AIR 1999 Guj 48

⁴ Jayakar Motilal C.R. Das v. Union of India, AIR 1999 Pat 221

Once the Chief Minister is appointed then he remains in the office for the tenure of 5 years which is also the tenure of the State Legislative Assembly. The Chief Minister can be continued to be the next Chief Minister if he remains the leader of the majority in the Assembly.

POWERS & FUNCTIONS OF CHIEF MINISTER

There are certain powers and functions of Chief Minister with respect to Council of Ministers, Governor, State Legislature and some other functions too.

Powers with respect to Council of Minister:

With respect to council of ministers Chief Minister has few powers with him like, He use to advice the Governor regarding the appointment, like to whom he should appoint in the council; So, *it is only according to the advice of the Chief Minister that the Governor appoints the minister*⁵.

Chief Minister allocates and reshuffle the portfolios among the ministers, in case difference of opinion happens between the ministers, Chief Minister can ask that minister to resign, such power Chief Minister has with him.

Chief Minister use to direct, guide, and control all the activities done by the ministers. In case when the Chief Minister resigns then the whole council of ministers have to resign mandatorily.

With respect to Governor

With respect to the Governor Chief Minister has few powers with him like he has to communicate with the governor in all the decisions of the council of minister regarding the administration of the state. Whenever the Governor calls him regarding to take the important decisions related to the administration of the state, Chief Minister is bound to provide him with all the necessary information required at that point of time.

The Governor can ask the Chief Minister for consideration of council of ministers when a decision has been taken without the consideration of the cabinet.

⁵ D. Satyanarayana v. N.T Rama Rao, AIR 1988 AP 62

Generally, The Chief Minister use to advise the Governor regarding the appointment of important officials like Attorney General, State Public Service Commission (Chairman and Members), State Election Commission etc.

With respect to State Legislature

Coming to the State Legislature, now we will look what powers does the Chief Minister has regarding the State Legislature. Basically, All the policies regarding the state use to be announced by the Chief Minister on the floor of the house. *Chief Minister can also recommend the dissolution⁶ of the state assembly to the Governor.* He is likely to advice the Governor regarding the Summoning, proroguing the sessions of the State Legislative Assembly from time to time.

Other functions of the Chief Minister

Now at last we will see the Other functions of the Chief Minister. Like at the ground level Chief minister is the only authority to be in contact with the audience and know about their problems what they are facing, what are the drawbacks and all so that he can bring all that problems in the assembly and some solutions should come of all that problems which the audience is facing. He also uses to act as the Chairman of the State Planning Commission, He is also the Vice-Chairman of the Zonal Council for a rotational period of 1 year. During emergency he has to act as a crisis manager in his state.

GOVERNOR

We all know that the Governor of the State is appointed by the President and he holds his office during the pleasure of the President. The Governor is the Head of the state like the head of Republic, i.e. The President. We all have read in our Civics book that the nominal head of the state is the Governor, while the Executive head of the state is the Chief Minister. All the executive actions are taken by the Chief Minister on the name of the Governor. Although, in reality Governor merely gives his consent to the various executive actions and is devoid of taking any major decisions.

In the Constitution of India, we can know more about the Governor in the Articles 153-161. Where the following articles mentions:

Art.153- Governor of States

⁶ K.N. Rajagopal v. M. Karunanidhi, AIR 1971 SC 1551

Art.154-Executive Power of State

Art.155-Appointment of Governor

Art.156-Term of Office of Governor

Art.157-Qualification for appointment as Governor

Art.158-Conditions of Governors Office

Art.159-Oath or Affirmation by the Governor

Art.160-Discharge of the functions of the Governor in certain contingencies

Art.161-Power of Governor to grant pardon, etc., and to suspend, remit or commute sentences in certain cases.

Qualification for the post of Governor

The person who wants to be the Governor of State should be a Citizen of India, have at least attained the age of 35 years and also must not hold the other office of profit. He also should not be the member of the Legislature of the Union or of any State.

Powers of Governor

The Governor do not have any of the diplomatic or military powers like the President, but he has *Executive, Legislative and Judicial Powers* alike to those of the President.

Under the *Executive powers* The Governor has got the power to appoint Council of Ministers, The Advocate General and the Members of the State Public Service Commission. The Advocate General and the Ministers remain in the office during the pleasure of the Governor but the Members of the State Public Service Commission can easily be removed by the President on the report of the Supreme Court, but in some cases, it also happens that some of them get disqualified too.

The Governor can consult the President regarding the appointment of the Judges of the High Court but he has no power to appoint them. The Governor also has the power to nominate the members of the Anglo-Indian community to the Legislative Assembly of his State like the President does.

The Governor can nominate persons having special knowledge or practical experience of literature, science, art, co-operative movement and social service to the legislative council.

Under the *Legislative powers*, The Governor has the right of addressing and sending messages, and of summoning, proroguing and dissolving the State Assembly as he is the part

of State Legislature. Under the **Judicial Powers**, The Governor has the power to grant pardons, reprieves, respites, or remission etc. of punishments⁷.

When it comes to *the salary of the Governor*⁸, he draws a salary of Rs. 1,10,000 per month and is also entitled to a rent-free official residence and other allowances & his salary and allowances are charged on the Consolidated Fund of the State and is not subject to the vote of the State Legislature.

Immunities to Governor

Article 361 of the Indian Constitution states that *A Governor shall not be answerable to any Court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of the power and duties.*

No criminal proceeding or trial could happen when the Governor is holding the office during his tenure neither the process for arrest or imprisonment can be issued against him from any of the Courts.

Civil proceedings against a Governor in which relief is claimed, can be instituted in a court while the Governor is in his office, only after two months from the date on which due notice has been given to him in writing regarding full details of the said proceedings.

Discretionary functions of the Governor

The functions which are specially required by the Constitution to be exercised by the Governor in his discretion are⁹:

- The Governor of Assam can determine the amount payable by the state of Assam to the District Council, as royalty accruing from licences for minerals.
- Where a Governor is appointed administrator of an adjoining Union Territory, he can function as such administrator independently of his Council of Ministers.

⁷ Article 161 of Constitution of India- Power of Governor to grant pardons, etc, and to suspend, remit or commute sentences in certain cases, May 11th 2020, 10:54 AM, <https://indiankanoon.org/doc/873751/>

⁸ Ashok Pande & Another v. Union of India Through Its Cabinet, 2nd Nov.2017

⁹ IAS Planner, (Indian Polity) Government of The State- Governor's Legislative, Financial, Judicial & Emergency Powers, Role and Sarkaria Commission, May 20, 2020, 00.59Am, <http://www.iasplanner.com/civilservices/ias-pre/gs-polity/government-of-the-state-governors-discretionary-powers-role-and-sarkaria-commission>

- The President may direct that the Governor of Maharashtra or Gujrat shall have a special responsibility for taking steps for the development of Vidarbha and Saurashtra.
- The Governor of Nagaland has a similar special responsibility with respect to law and order in that State.
- Governor of Manipur has Special responsibility to secure the proper functioning of the Committee of the Legislative Assembly consisting of the members elected from the Hill Areas of that State.
- Governor of Sikkim has special responsibility for peace and equitable arrangement for ensuring the social and economic advancement.
- The Governor has got the power to dismiss an individual Minister at any point of time.
- Governor can dismiss a Council of Ministers or the Chief Minister, only when the Council of Ministers has lost confidence of the Legislative Assembly and the Governor does not think fit to dissolve the Assembly.

CONCLUSION

At last I want to conclude this research paper after citing various case laws for the refences that the state executive is the branch of government exercising authority in the hands of government holding the authority for the governance of a state is such a system, the executive does not pass laws (the role of the legislatures) or interpret them (the role of judiciary) due to the separation of powers. The state legislature consists of the governor and one or two houses. The constitution provides that in each state there shall be a legislative council or vidhan parishad existing under Article 168 of the constitution. The executive power of the state shall be exercised by him either directly or through officer's subordinate to him in accordance with this constitution.

Basically, the main purpose of executives is to maintain the social welfare and the goodness among the society and the citizens. The powers which are given to the state government and executives are to maintain the recklessness of the society, to maintain the laws, to serve the citizens, to punish the culprits and to maintain social welfare in the state. They have some powers to maintain law and rules in the state and as a state, it should always find itself obedient to follow the rules and regulations and maintain social peace and welfare.



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