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Contents

1. STATE EXECUTIVES & LEGISLATURE

The Governor

At the state level, there is a Governor in whom the executive power of the State is vested by the Constitution. But the Governor acts as a nominal head and the real executive powers are exercised by the Council of Ministers headed by the Chief Minister. Our Constitution provides for Parliamentary form of government both at the Centre as well as in the States.

The head of the executive in all the states is the Governor, who is the constitutional head like the President. **Article 153** creates the office of the Governor. Generally each state has a Governor but under the provision to Article 153, the same person may be appointed Governor for two or more states. The executive power of the state is exercised by the Governor either directly or through officers subordinates to him.

> Articles 153 to 167 in Part VI of the Constitution deal with the state Executive. 7th Constitutional Amendment Act of 1956 facilitated the appointment of the same person as a governor for two or more states

Appointment

The Governor of a State is appointed by the President of India. In order to become a Governor, a person must have the following qualifications. He/She:

- Must be a citizen of India,
- Must be at least 35 years old, and
- Should not hold any office of profit during his/her tenure.

If a person is a member of either House of the Parliament or the Legislature of a State, or a member of the Council of Ministers at the national or the state level and is appointed as Governor, he/she resigns that post. The Governor is appointed for a term of five years but normally holds office during the pleasure of the President. The pleasure of the President means that the Governor may be removed by thePresident even before the expiry of his/her term. He/She may also resign earlier. However, in reality, while appointing or removing the Governor, the President goes by the advice of the Prime Minister.

The Governor is appointed by the President (Article 155) and holds office for five years subject to the pleasure of the President.

Oath and Term of Office

The oath of the Governor is given by the Chief Justice of the High Court or in his absence the senior most Judge of the High Court.

The Governor holds office for a term of 5 years from the date on which is enters upon his office. But his appointment may be terminated earlier because he holds office during the pleasure of the President.

Conditions of Governor's office

The Constitution lays down the following conditions for the governor's office:

- He should not be a member of either House of Parliament or a House of the state legislature. If any such person is appointed as governor, he is deemed to have vacated his seat in that House on the date on which he enters upon his office as the governor.
- He should not hold any other office of profit.
- He is entitled without payment of rent to the use of his official residence.
- He is entitled to such emoluments, allowances and privileges as may be determined by Parliament.
- When the same person is appointed as the governor of two or more states, the emoluments and allowances payable to him are shared by the states in such proportion as determined by the president.
- His emoluments and allowances cannot be diminished during his term of office.

  Like the President, the governor is also entitled to a number of privileges and immunities. He enjoys personal immunity from legal liability for his official acts. During his term of office, he is immune from any criminal proceedings, even in respect of his personal acts. He cannot be arrested or imprisoned. However, after giving two months' notice, civil proceedings can be instituted against him during his term of office in respect of his personal acts.

Removal of Governor

A governor holds office for a term of five years from the date on which he enters upon his office. However, this term of five years is subject to the pleasure of the President. Further, he can resign at any time by addressing a resignation letter to the President. The President may transfer a Governor appointed to one state to another for the rest of the term. A Governor whose term has expired may be reappointed in the same or any other state. There is no bar to being appointed Governor more than once. The Supreme Court held that the pleasure of the President is not justifiable. The governor has no security of tenure and no fixed term of office. He may be removed by the President at any time.

The Constitution does not lay down any grounds upon which a governor may be removed by the President.

Issues on Removal of the Governor

After the 16th Lok Sabha election, there was debate around powers of the central government to remove Governors. Various reports had suggested that the central government was seeking resignations of Governors, who were appointed by the previous central government.

The Supreme Court's Interpretation

- In 2010, a constitutional bench of the Supreme Court interpreted these provisions and laid down some binding principles (B.P. Singhal v. Union of India). In this case, the newly elected central government had removed the Governors of Uttar Pradesh, Gujarat, Haryana and Goa in July, 2004 after the 14th Lok Sabha election. When these removals were challenged, the Supreme Court held:
- The President, in effect the central government, has the power to remove a Governor at any time without giving him or her any reason, and without granting an opportunity to be heard.
- However, this power cannot be exercised in an arbitrary, capricious or unreasonable manner. The power of removing Governors should only be exercised in rare and exceptional circumstances for valid and compelling reasons.

- The mere reason that a Governor is at variance with the policies and ideologies of the central government, or that the central government has lost confidence in him or her, is not sufficient to remove a Governor. Thus, a change in central government cannot be a ground for removal of Governors, or to appoint more favourable persons to this post.
- A decision to remove a Governor can be challenged in a court of law. In such cases, first the petitioner will have to make a prima facie case of arbitrariness or bad faith on part of the central government. If a prima facie case is established, the court can require the central government to produce the materials on the basis of which the decision was made in order to verify the presence of compelling reasons.

Powers of the Governor

Governor enjoys various powers like the President, with their nature varying from **Executive, Legislative, Judicial, to Emergency.**

Executive Powers

The Constitution of India vests the entire executive powers **(Article 154)** of the State in the Governor who performs these functions according to the aid and advice of the Council of Ministers with the Chief Minister as its head.

Article 166(2) of the Constitution provides that orders and instruments made and executed in the name of the Governor are to be authenticated in such manner as may be specified in the rules made by the Governor under **Article 166(3)** to make rules for the most convenient transaction of the business of the Government of the state and for the allocation among its ministers the business of Government. All matters excepting those in which the Governor is required to act in his discretion have to be allocated to one or the other minister on the advice of the chief Minister. Besides the allocation of business amongst the ministers, the Governor can also make rules on the advice of the council of ministers for more convenient transaction of government business.

The Governor appoints the following:

- The Chief Minister and other ministers with the advice of the Chief Minister. Like the President, the Governor has hardly any choice in appointing the Chief Minister. He has to appoint the leader of the party having absolute majority in the legislative assembly as the Chief Minister. However, in case of no party having a clear cut majority in the House, the Governor may use his discretion.
- Appointment of the Advocate-General.
- Appointment of Chairman and the members of the State Public Service Commission.
- Appointment of the members of the subordinate judiciary (District Judge and below).
- Appointment of Vice-Chancellors of state universities. The Governor is the Chancellor of the universities run by the state.

  Though the Governor has no power to appoint the Judges of the state High Court, he may be consulted by the President in such appointment is made.

Legislative Powers

The Governor is a part of the legislature (Article 168), in this capacity he performs the following legislative functions:

- To summon, prorogue the state legislature and dissolve the legislative Assembly.
- He has the right to address the legislature and to send messages to it.
- No Bill can become a law unless the Governor gives assent to it. He can give his assent, withhold his assent or use the pocket veto to a state Bill.
- He nominates one member of the legislative council form among persons having special experience in art, science, literature, social service or cooperative movement.

- **Assent to Bills:** Under Article 200 When a bill is sent to the governor after it is passed by state legislature, he can:
  - Give his assent to the bill, or
  - Withhold his assent to the bill, or
  - Return the bill (if it is not a money bill) for reconsideration of the state legislature. However, if the bill is passed again by the state legislature with or without amendments, the governor has to give his assent to the bill, or
  - Reserve the bill for the consideration of the president. In one case such reservation is obligatory, that is, where the bill passed by the state legislature endangers the position of the state high court. In addition, the governor can also reserve the bill if it is of the following nature:
    - If it is, against the provisions of the Constitution.
    - Opposed to the Directive Principles of State Policy.
    - Against the larger interest of the country.
    - Of grave national importance.
    - Dealing with compulsory acquisition of property under Article

A bill Reserved for President's Consideration (Article 201)

When the governor reserves a bill for the consideration of the President, he will not have any further role in the enactment of the bill. If the bill is returned by the President for the reconsideration of the House or Houses and is passed again, the bill must be presented again for the presidential assent only. If the President gives his assent to the bill, it becomes an act. This means that the assent of the Governor is no longer required.

Ordinance Making Powers : During a recess of the State Legislature, circumstances may exist which are considered by the State Government to necessitate immediate legislative action. To meet such urgency, Article 213 empowers the Governor to promulgate an Ordinance with respect to any matter within the legislative competence of the State Legislature, if necessary, after obtaining instructions from the President. This power has to be exercised by him with the aid and advice of his Council of Ministers and not in his discretion. Its exercise is further subject to the following condition precedent:

- The Governor (in reality, the Council of Ministers) must be satisfied 'that circumstances exist which render it necessary for him to take immediate action'.
- The Legislative Assembly is not in session, or where there is also a Legislative Council in the State, both Houses of the Legislature are not in session.
  - **Article 213** requires that the Ordinance 'shall be laid' before the State Legislature when it reassembles.
  - Further it makes clear that the Ordinance shall have only a limited life. It's imperative is that the Ordinance shall cease to operate at the expiration of six weeks from the reassembly of the Legislature unless disapproved earlier by resolution of the Legislature or withdrawn earlier by the Governor.

    Further the Governor cannot make an ordinance without the instructions from the President in three cases:
  - If a bill containing the same provisions would have required the previous sanction of the President for its introduction into the state legislature.
  - If he would have deemed it necessary to reserve a bill containing the same provisions for the consideration of the President.
  - If an act of the state legislature containing the same provisions would have been invalid without receiving the President's assent.

Financial Powers

The financial powers and functions of the governor are:

- He sees that the Annual Financial Statement (state budget) is laid before the state legislature.
- Money bills can be introduced in the state legislature only with his prior recommendation.

- No demand for a grant can be made except on his recommendation.
- He can make advances out of the Contingency Fund of the state to meet any unforeseen expenditure.
- He constitutes a finance commission after every five years to review the financial position of the panchayats and the municipalities.

The Judicial Powers

Article 161 confers on the Governor the power to grant pardon, commutation remission, respite or reprieve to any person convicted of any offence against any law relating to matters to which the executive power of the State extends.

This power is available to the President under Article 72. However, the power of the President under Article 72 is much wider. The President has the exclusive power to grant pardon in cases where a person has been sentenced to death. The Governor cannot grant pardon in case of death sentence. He can only commute the punishment. The Governor has no power in relation to Court martial. In regards suspension remission and commutation of sentence of death the powers of the Governor and President are concurrent.

While appointing the judges of the concerned state high court, he is consulted by the President. He makes appointments, postings and promotions of the district judges in consultation with the state high court.

Discretionary Powers

As we know, the Governor acts on the advice of the State Council of Ministers. This means that in reality, the Governor has no powers. But according to the Constitution, under special circumstances, he/ she may act without the advice of the Council of Ministers. Such powers, which are exercised by the Governor on his own, are called discretionary powers.

- Reservation of a bill for the consideration of the President.
- Recommendation for the imposition of the President's Rule in the state.
- While exercising his functions as the administrator of an adjoining union territory (in case of additional charge).
- If he/she thinks that the government of the State is not functioning according to the Constitution, he/she can report to the President. In that case under Article 356, the President's Rule is applied.
- is imposed, the State Council of Ministers is removed and the State Legislature
- is dissolved or put under suspension
- Determining the amount payable by the Government of Assam, Meghalaya, Tripura and Mizoram to an autonomous Tribal District Council as royalty accruing from licenses for mineral exploration.
- Seeking information from the chief minister with regard to the administrative and legislative matters of the state.

In addition to this the governor, like the president, also has situational discretion:

- If no political party or coalition of parties wins a clear majority in the Legislative Assembly, he/she can exercise his/her discretion in inviting a person to be the Chief Minister.
- Dismissal of the council of ministers when it cannot prove the confidence of the state legislative assembly.
- Dissolution of the state legislative assembly if the council of ministers has lost its majority.

Powers Explicitly Conferred by the Constitution

- Article371 (1)—Special responsibility of the Governor of Maharashtra and Gujarat for the establishment of development boards for Vidarbha, Marathwada, Saurashtra and Kutch, etc.
- Article 371A—Special responsibility of the Governor of Nagaland.

- With respect to law and order so long as internal disturbances occur in some area of that state.
- To establish a regional council for Tuensang district.
- To arrange for equitable allocation of Money between Tuensang district and the rest of Nagaland.

Article 371C (1)—Special responsibility of the Governor of Manipur to secure the proper functioning of a committee of the members of the legislative Assembly consisting of the members representing the hill area.

Article 371F (g) — Special responsibility of the Governor of Sikkim for the peace and for an equitable arrangement for ensuring the advancement of different section of the population of Sikkim

Article 371H (a)—Special responsibility of the Governor of Arunachal Pradesh with respect to law and order.

The 6th Schedule provides that the Governor of Assam shall determine the amount payable by the state of Assam to the district council as royalty accruing from licenses for minerals.

Relationship between the Governor and the Council of Ministers

As we have seen above, the State executive consists of the Governor, the Chief Minister and the Council of Ministers. Normally, the Governor exercises all his/her powers on the advice of the Council of Ministers. We know that when the Chief Minister is sworn in, the Governor simply performs a formal duty. He/She invites the leader of the majority in the State Legislative Assembly to be sworn in as the Chief Minister. The members of the Council of Ministers are also appointed by the Governor on the recommendations of the Chief Minister. The majority can consist of members of Legislative Assembly belonging to one party or a group of parties and independents. However, when there is no clear majority in the House electing one candidate as its leader, the Governor can exercise his/her discretionary power.

Similarly, although theoretically the Ministers hold their offices during the pleasure of the Governor, in practice the Chief Minister and the Council of Ministers remain in office till they enjoy the support of the majority in the Legislative Assembly. The Governor can dismiss them only when the President's Rule is imposed. The Chief Minister is required to communicate to the Governor all the decisions of the Council of Ministers. He/She may call for necessary information related to the state administration. If a Minister individually takes a decision, the Governor may ask the Chief Minister to place such a matter for consideration of the Council of Ministers. It is true that the Governor is a nominal head and the real powers are exercised by the Council of Ministers headed by the Chief Minister. But it will not be correct to say that the Governor is just a constitutional or ceremonial head. He/ She can exercise his/her powers effectively under certain circumstances, especially when there is political instability in the State. Since he/she is a link between the Centre and the State, he/she becomes very effective, if the central government sends directions to the State government. The discretionary powers also make the Governor to act as a real executive in particular circumstances.

Governor Under the Indian Federation: A Critical Reappraisal

Appointment of Governor

As suggested by Brajeshwar Prasad in the constitutional Assembly, the Governor should be appointed by the President, the President's choice should be unfettered and, further, that it was necessary to maintain the authority of the Government of India over States. Ultimately, in the new Constitution, the Governor emerged as a constitutional head appointed by the President of India for a term of five years but hold office during the pleasure of the President.

Under the Constitution the only qualification for a Governor's appointment is that he should be a citizen of India and should have completed the age of 35 years. That is the literal and theoretical requirement.

The Union government has followed no particular principles and there is no fixed criterion for the appointment of Governors. In most of the cases the only criterion before the Central government was that the person must be pliable and can dance to the tune of the Centre as well as to serve the interest of the party. By and large, appointments to the Governorship have been made on party considerations and majority of the Governors belongs to the ranks of politicians connected with the ruling party. There is no consultation with the Chief Minister in every case, nor has his consent been taken. In such cases, some damage is done to the federal principle, and it becomes difficult to establish mutual trust and harmonious relations between the Governor and his Council of Ministers. The Governor is likely to be regarded as an imposition and an agent of the Central government, more so when the Central and the State have Ministries of different political complexions. Instead of serving as a useful link between the Centre and the State, and contributing towards a smooth working of the federal system, he becomes an object of suspicion to the State Ministry.

Misuse of Article 356

The most blatant misuse of power by the Governor is Article 356 which empowers him to report to the President in the event of the failure of the constitutional machinery in the state. All successive governments who came to power at the Centre have misused the power of the Governor. In fact, this provision which was included as a life saving device by the framers of the Constitution has become too poisonous to our political system. This power of the Governor was used by all governments which were not at all contemplated by the framers of the Constitution.

For example, on inadequate grounds, in situations which could have been dealt with by normal democratic process, to remove political deadlocks and factional rivalries inside the ruling party, to frustrate the formation of opposition government, to get rid of inconvenient state governments and lastly for political rather than constitutional ends. The arbitrary dismissal of the State governments, suspension and dissolution of the Assembly on the partisan consideration clearly shows that these provisions [Articles 174(b) and 356] have been thoroughly misused by the Central government.

The power to dislodge a State government at the free will of the Centre comes from Article 356.It reads "If the President, on receipt of report from the Governor of a State or otherwise, is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by proclamation;

- Assume to himself all or any of the powers vested in or exercisable by the Governor or anybody or authority in the State other than the Legislature of the State,
- Declare that the powers of the Legislature of the State shall be exercisable by or under the authority of the Parliament, and
- Make such incidental or consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the proclamation, including provisions for suspending in whole or in part the operation of any of the provisions of the Constitution relating to anybody or authority in the State, save those vested in or exercisable by the High Court.

  In Bommai case the Supreme Court observed that **"The Governor's report may not be conclusive but its relevance is undeniable. Action under Article can be based only and exclusively upon such report. Governor is a very high constitutional functionary. He is supposed to act fairly and honestly consistent to his oath. He is actually reporting against his own government. It is for this reason that Article 356 places such implicit faith in his report. If, however, in a given case, his report is vitiated by legal mala fides, it is bound to vitiate the President's action as well."**

  It further observed that, "The Constitution does not hold an obligation that the political party forming the Ministry should necessarily have a majority in the Legislature. Minority governments are not unknown. What is necessary is that government should enjoy the confidence of the House. Secondly and more importantly, whether the Council of Ministers has lost the confidence of the House is not a matter to be determined by the Governor or for that matter anywhere else except the floor of the House. The principle of democracy underlying our Constitution necessarily means that any such question should be decided on the floor of the House. It is not for the Governor to determine the said question on his own or on his own verification. This is not a matter within his subjective satisfaction. It is an objective fact capable of being established on the floor of the House."

  However in the light of the nearly five decades of the working of the Constitution, it is clear that the very vagueness of the expression used in Article 356 has facilitated its abuse. Even the Supreme Court judgment

in S.R. Bommai case and the Recommendations of Sarkaria Commission have not deterred its abuse of Article 356. The need of the hour is to define precisely what constitute the phrase "failure of constitutional machinery

Reservation a Bill passed by the State Legislature

- Under Article 200, the State Governor is constitutionally competent to reserve a Bill passed by the State Legislature for the consideration of the President. The reservation of a Bill on the part of the Governor for reference to the President is an important area of controversy with regard to the Centre-State relations in the Indian Federation. As such the basic objectives of Article 200 are to preserve the independence, dignity and status of the State judiciary. However, the Bill other than those relating to the High Court may also be reserved by the Governor for the consideration of the President under Article 201.
- Under Article 201, the President may take three courses against the Bills reserved by the Governor of the State. He may assent to the Bill or he may withhold his assent, or he may direct the Governor to send back a Bill for the reconsideration of the State Assembly which has already passed the Bill. The Constitution does not describe any time limit for the President to refuse his assent to a reserved State Bill.
- The constitutional propriety of the Governor's action under Article 200 and that of the President under Article 201 cannot be questioned in a Court of Law. Thus, Articles 200 and 201 make it clear that the President veto over the State Legislature is absolute and cannot be over-ridden. Thus, the Centre has over-ridden power on the authority of the State.

Promulgating Ordinance

Article 213 empowers the Governor of a State to promulgate Ordinance during the recess of the State Legislature. The provision was designed to remedy the rigidity of a federal constitution and make it flexible. Moreover, it was to be exercised in good faith by the Executive. But as ***D.C. Wadhwa*** has shown, there has been a gross misuse of this power leading to a fraud on the Constitution of India and a gross abuse of power. The Governor gravely abused the power to issue Ordinance by re-promulgating them the power being used for a purpose for which it was never intended.

The Court declared the Ordinance ultra vires and the ground that the Governor's "satisfaction" in promulgating the Ordinance was "justiciable". From the critical analysis of the position and role of the Governor in our federation, it has been revealed that there have developed some disturbing trends in the role of the Governor. Between the constitutional position of the Governor and the actual practice, there is a wide difference which defeats the very basic beliefs of the framers of the Constitution.

To make the role of Governors really meaningful in our federation for maintaining the principles and spirit of parliamentary government, it is submitted that the exercise of discretionary powers by the Governors should be guided by a set of instructions in the form of a code which would at least bring uniformity in the roles of all Governors in exercising their discretionary powers. For providing such a code of instructions for the Governors, the Constitution should be amended so as to insert a new schedule in the Constitution containing instructions for the Governors.

Sarkaria Commission

On Articles 200 & 201 Assent to bills and Bills reserved by the Governor for consideration of the President

The Commission pointed out the matters in which the Bills may be reserved for the President's consideration and assent for specific purposes. They are:

- To secure immunity from the operation of Articles 14 & 19, namely, Bills for acquisition of estates, etc and for giving effect to Directive Principles of State Policy (Provision to Article31C).
- A Bill relating to the subjects enumerated in the Concurrent List, to ensure operation of its provisions despite their repugnancy to a Union law or existing law, by securing President's assent in terms of Article254(2).
- Legislation imposing restrictions on trade and commerce requiring Presidential sanction under the proviso to Article 304 (b) read with Article255

The Commission pointed out specifically that the above situations do not exhaust the situations in which the Bill may be reserved for the consideration of the President that there may be other matters as well in which the Governor may in his discretion think it proper to reserve a Bill for the consideration of the President.

On the person to be appointed as a Governor

- Should be an eminent person;
- Must be a person from outside the State;
- Must not have participated in active politics at least for sometime before his appointment;
- He should be a detached person and not too intimately connected with the local politics of the State;
- He should be appointed in consultation with the Chief Minister of the State, Vice-President of India and the Speaker of the Lok Sabha;
- His tenure of office must be guaranteed and should not be disturbed except for extremely compelling reasons and if any action is to be taken against him he must be given a reasonable opportunity for showing cause against the grounds on which he is sought to be removed. In case of such termination or resignation by the Governor, the Government should lay before both the Houses of Parliament a Statement explaining the circumstances leading to such removal or resignation, as the case may be;
- After demitting his office, the person appointed as Governor should not be eligible for any other appointment or office of profit under the Union or a State Government except for a second term as Governor or election as Vice-President or President of India, as the case may be;
- At the end of his tenure, reasonable post-retirement benefits should be provided.

If there is no single party having an absolute majority in the Assembly, the Governor should select a Chief Minister, in the order of preference indicated below:

- An alliance of parties that was formed prior to the Elections.
- The largest single party staking a claim to form the government with the support of others, including 'independents'.
- a post-electoral coalition of parties, with all the partners in the coalition joining the government.
- a post-electoral alliance of parties, with some of the parties in the alliance forming a Government and the remaining parties, including 'independents' supporting the government from outside.
- The Governor while going through the process described above should select a leader who in his (Governor's) judgment is most likely to command a majority in the Assembly.

It was also recommended that a Chief Minister, unless he is the leader of a party which has absolute majority in the Assembly, should seek a vote of confidence in the Assembly within 30 days of taking over

Constitutional Position of Governor

The Constitution of India provides for a parliamentary form of government in the states as in the Centre. Consequently, the governor has been made only a nominal executive, the real executive constitutes the council of ministers headed by the chief minister. In other words, the governor has to exercise his powers and functions with the aid and advise of the council of ministers headed by the chief minister, except in matters in which he is required to act in his discretion (i.e., without the advice of ministers).

In estimating the constitutional position of the governor, particular reference has to be made to the provisions of Articles 154, 163 and 164.

These are:

- The executive power of the state shall be vested in the governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution (Article 154).
- There shall be a council of ministers with the chief minister as the head to aid and advice the governor in the exercise of his functions, except in so far as he is required to exercise his functions in his discretion (Article 163).
- The council of ministers shall be collectively responsible to the legislative assembly of the state (Article 164). This provision is the foundation of the parliamentary system of government in the state.

The Governor is the head of the State much in the same way as the President is of the Union. He is the executive head of the State; he exercises his powers either directly or through officers subordinate to him in accordance with the Constitution.

The Governor is the Constitutional Head of a State as well as a Constitutional link between the Center and the States. He also functions as the agent of the Union Government with the power to report to the President about the breakdown of the Constitutional machinery of the State. But at the same time there are some provisions in the Constitution which specifically provide that the Governor is to exercise his powers and functions independently of his Council of Ministers.

The dual role of Governor as the Constitutional Head of a State as well as a link between the Center and the States became a bone of contention. In past, the appointment of the Governor has been subject of much controversy as Governors have been unashamedly appointed in total disregard of these norms with the incumbents of some office of governor in the country functioning more as agents of the ruling party at the Center rather than as guardians of federal democracy, it has undoubtedly emerged as one of the key issues in Union-State relations.

From the above, it is clear that constitutional position of the governor differs from that of the president in the following two respects:

- While the Constitution envisages the possibility of the governor acting at times in his discretion, no such possibility has been envisaged for the President.
- After the 42nd Constitutional Amendment (1976), ministerial advice has been made binding on the President, but no such provision has been made with respect to the governor.
- The Constitution makes it clear that if any question arises whether a matter falls within the governor's discretion or not, the decision of the governor is final and the validity of anything done by him cannot be called in question on the ground that he ought or ought not to have acted in his discretion.

Discretionary Power of the Governor

Discretionary power of the Governor Article 163 of the Constitution states that "There shall be a council of ministers with the chief minister as the head to aid and advice the governor in the exercise of his functions, except in so far as he is required to exercise his functions in his discretion (Article 163).

Supreme Court Views on Article 163

- The detailed judgment of SC in **Rameshwar Prasad vs Union of India** on January 24, 2006 holding the dissolution of the Bihar Assembly as illegal and unconstitutional has enunciated far-reaching constitutional principles and will have wide ramifications. Although the Court held the dissolution unconstitutional it did not direct status quo ante and the revival of the assembly. Earlier, in an interim order delivered on the 7th October 2005, the Bench had, even while finding the dissolution unconstitutional, expressed its inability to restore the dissolved Assembly in view of the electoral process under way then to constitute a new Assembly.
- In multiple judgements including Arunachal Pradesh Crisis, Uttarakhand Case etc. SC has interpreted "Governor is required to..." phrase used in article 163 as this is under exceptional circumstances. Normally Governor is mandated to aid and advice of Council of Ministers.

It is clear that constitutional position of the governor differs from that of the president in the following two respects:

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The governor has constitutional discretion in the following cases:

- Reservation of a bill for the consideration of the President.

- Recommendation for the imposition of the President's Rule in the state.
- While exercising his functions as the administrator of an adjoining union territory (in case of additional charge).
- Determining the amount payable by the Government of Assam, Meghalaya, Tripura and Mizoram to an autonomous Tribal District Council "as royalty accruing from licenses for mineral exploration.
- Seeking information from the chief minister with regard to the administrative and legislative matters of the state.

In addition to the above constitutional discretion (i.e., the express discretion mentioned in the Constitution), the governor, like the president, also has situational discretion (i.e., the hidden discretion derived from the exigencies of a prevailing political situation) in the following cases:

- Appointment of chief minister when no party has a clear-cut majority in the state legislative assembly or when the chief minister in office dies suddenly and there is no obvious successor.
- Dismissal of the council of ministers when it cannot prove the confidence of the state legislative assembly.
- Dissolution of the state legislative assembly if the council of ministers has lost its majority."

Misuse of discretionary power by the Governor

- As an appointee of the Union Government, the Governors have been prone to act on the instructions by ruling party at the Centre.
- Inevitably the "discretion" in choosing a Chief Minister, or requiring a Chief Minister to prove his/her majority, or dismissing a Chief Minister, dissolving the legislature, recommending President's Rule — came to be tainted with partisan political considerations.
- More often than not, the governor's discretion was abused, sometimes absurdly, even whimsically.
- **In the S.R. Bommai case (1994),** the Supreme Court did try through its judgment to prevent the misuse of power. In this case, following the Sarkaria Commission's recommendations, the Supreme Court underlined that the breakdown of constitutional machinery implied a virtual impossibility, and not a mere difficulty, in carrying out governance in a State.
  - SC said that while the subjective satisfaction of the President regarding such a breakdown was beyond judicial scrutiny, the material on which such satisfaction was based could certainly be analysed by the judiciary, including the Governor's report.
  - The Court reinstated the governments in Arunachal Pradesh and Uttarakhand which were suspended after the arbitrary imposition of the President's Rule.
  - The Supreme Court classified the instances of failure of constitutional machinery into four heads:
    - Political crises.
    - Internal subversion.
    - Physical breakdown.
  - Non-compliance with constitutional directions of the Union Executive.

Punchhi Commission Recommendation Specific to Governor

- The period of six months prescribed in Article 201 for State Legislature to act when the bill is returned by the President can be made applicable for the President also to decide on assenting or withholding assent to a state bill reserved for consideration of the President.
- While selecting Governors, the Central Government should adopt the following strict guidelines as recommended in the Sarkaria Commission report and follow its mandate in letter and spirit :
  - He should be eminent in some walk of life.
  - He should be a person from outside the state.
  - He should be a detached figure and not too intimately connected with the local politics of the states.
  - He should be a person who has not taken too great a part in politics generally and particularly in the recent past.

- Governors should be given a fixed tenure of five years and their removal should not be at the sweet will of the Government at the Centre.
- The procedure laid down for impeachment of President, mutatis mutandis can be made applicable for impeachment of Governors as well.
- **Article 163** does not give the **Governor a general discretionary power** to act against or without the advice of his Council of Ministers. In fact, the area for the exercise of discretion is limited and even in this limited area, his choice of action should not be arbitrary or fanciful. It must be a choice dictated by reason, activated by good faith and tempered by caution.
- In **respect of bills passed by the Legislative Assembly of a state**, the Governor should take the decision within six months whether to grant assent or to reserve it for consideration of the President.
- On the **question of Governor's role in appointment of Chief Minister in the case of a hung assembly**, it is necessary to lay down certain clear guidelines to be followed as Constitutional conventions. These guidelines may be as follows:
- The party or combination of parties which commands the widest support in the Legislative Assembly should be called upon to form the Government.
- If there is a pre-poll alliance or coalition, it should be treated as one political party and if such coalition obtains a majority, the leader of such coalition shall be called by the Governor to form the Government.
- **In case no party or pre-poll coalition has a clear majority, the Governor should select the Chief Minister in the order of preference indicated here:**
  - The group of parties which had pre-poll alliance commanding the largest number.
  - The largest single party staking a claim to form the government with the support of others.
  - A post-electoral coalition with all partners joining the government
  - A post-electoral alliance with some parties joining the government and the remaining including independents supporting the government from outside
- **On the question of dismissal of a Chief Minister**, the Governor should invariably insist on the Chief Minister proving his majority on the floor of the House for which he should prescribe a time limit.
- The Governor should have the right to sanction for prosecution of a state minister against the advice of the Council of Ministers, if the Cabinet decision appears to the Governor to be motivated by bias in the face of overwhelming material.

Comparing Veto Powers of President and Governor

President	Governor
With Regard to Ordinary Bills	With Regard to Ordinary Bills
Every ordinary bill, after it is passed by both the Houses of the Parliament either singly or at a joint sitting, is presented to the President for his assent. He has three alternatives:	Every ordinary bill, after it is passed by the legislative assembly in case of a unicameral legislature or by both the Houses in case of a bicameral legislature either in the first instance or in the second instance, is presented to the governor for his assent. He has four alternatives:
⊙ He may give his assent to the bill, the bill then becomes an act.	⊙ He may give his assent to the bill, the bill then becomes an act.
⊙ He may withhold his assent to the bill, the bill then ends and does not become an act.	⊙ He may withhold his assent to the bill, the bill then ends and does not become an act.

⊙ He may return the bill for reconsideration of the Houses. If the bill is passed by both the Houses again with or without amendments and presented to the President for his assent, the president must give his assent to the bill. Thus the president enjoys only a 'suspensive veto'.	⊙ He may return the bill for reconsideration of the House or Houses. If the bill is passed by the House or Houses again with or without amendments and presented to the governor for his assent, the governor must give his assent to the bill. Thus, the governor enjoys only a 'suspensive veto'. ⊙ He may reserve the bill for the consideration of the President.
When a state bill is reserved by the governor for the consideration of the President, the President has three alternatives: ➤ He may give his assent to the bill, the bill then becomes an act. ➤ He may withhold his assent to the bill, the bill then ends and does not become an Act. ➤ He may return the bill for reconsideration of the state legislature. When a bill is so returned, the House or Houses have to reconsider it within six months. If the bill is passed by the House or Houses again with or without amendments and presented to the president for his assent, the president is not bound to give his assent to the bill. He may give his assent to such a bill or withhold his assent.	When the governor reserves a bill for the consideration of the President, he will not have any further role in the enactment of the bill. If the bill is returned by the President for the reconsideration of the House or Houses and is passed again, the bill must be presented again for the presidential assent only. If the President gives his assent to the bill, it becomes an act. This means that the assent of the Governor is no longer required.
Every money bill after it is passed by the Parliament, is presented to the President for his assent. He has two alternatives:	Every money bill, after it is passed by the state legislature (unicameral or bicameral), is presented to the governor for his assent. He has three alternatives:
⊙ He may give his assent to the bill, the bill then becomes an act.	⊙ He may give his assent to the bill, the bill then becomes an act.
⊙ He may withhold his assent to the bill, the bill then ends and does not become an act.	⊙ He may withhold his assent to the bill, the bill then ens and does not become an act.
Thus, the President cannot return a money bill for the reconsideration of the Parliament. Normally, the president gives his assent to a money bill as it is introduced in the Parliament with his previous prermission. When a Money Bill is reserved by the Governor for the consideration of the President, the President has two alternatives:	Thus, the governor cannot return a money bill for the reconsideration of the state legislature. Normally, the governor gives his assent to a money bill as it is introduced in the state legislature with his previous permission. When the governor reserves a money bill for the consideration of the President, he will not have any further role in the enactment of the bill. If the President gives his assent to the bill, it becomes an Act. This means that the assent of the governor is no longer required.
➤ He may give his assent to the bill, the bill then becomes an Act.	
➤ He may withhold his assent to the bill, the bill then ends and does not become an act.	
Thus, the President cannot return a money bill for the reconsideration of the state legislature (as in the case of the Parliament).	

Comparing Ordinance-Making Power of President & Governor

President	Governor
⊙ He can promulgate an ordinance only when bote the Houses of Parliament are not in session or when either of the two Houses of parliament is not in session. The second provision implies that an ordinance can also be promulgated by the president when only one House is in session because a law can be passed by both the Houses and not by one House alone.	⊙ He can promulgate an ordinance only when the legislative assembly (in case of a unicameral legislature) is not in session or (in case of a bicameral legislature) when both the Houses of the state legislature are not in session or when either of the two Houses of the state legislature is not in session. The last provision implies that an ordinance can be promulgated by the governor when only one house (in case of a bicameral legislature) is in session because a law can be passed by both the Houses and not by one House alone.
⊙ He can promulgate an ordinance only when he is satisfied that circumstances exist which render it necessary for him to take immediate action.	⊙ He can promulgate an ordinance only when he is satisfied that circumstances exist which render it necessary for him to take immediate action.
⊙ His ordinance-making power is co-extensive with the legislative power of the Parliament. This means that he can issue ordinances only on those subjects on which the Parliament can make laws.	⊙ His ordinance-making power is co-extensive with the legislative power of the state legislature. This means that he can issue ordinances only on those subjects on which the state legislature can make laws.
⊙ An ordinance issued by him has the same force and effect as an act of the Parliament.	⊙ An ordinance issued by him has the same force and effect as an act of the state legislature.
⊙ An ordinance issued by him has the same force and effect as an of the Parliament.	⊙ An ordinance issued by him has the same force and effect as an act to of the state legislature.
⊙ An ordinance is issued by him is subject to the same limitations as an of Parliament. This means that an ordinance issued by him will be invalid to the extent it makes any provision which the Parliament cannot make.	⊙ An ordinance issued by him is subject to the same limitations as an act of the state legislature. This means that an ordinance issued by him will be invalid to the extent it makes any provision which the state legislature cannot make.
⊙ He can withdraw an ordinance at any time.	⊙ He can withdraw an ordinance at any time.
⊙ His ordinance-making power is not a discretionary power. This means that he can promulgate or withdraw an ordinance only on the advice of the council of ministers of ministers headed by the prime minister.	⊙ His ordinance-making power is not a discretionary power. This means that he can promulgate or withdraw an ordinance only on the advice of the council headed by the chief minister.
⊙ An ordinance issued by him should be laid before both the Houses of Parliament when it reassembles.	⊙ An ordinance issued by him should be laid before the legislative assembly or both the Houses of the state legislature (in case of a bicameral legislature) when it reassembles.
⊙ An ordinance issued by him ceases to operate on the expiry of six weeks from the reassembly of Parliament. It may cease to operate even earlier than the prescribed six weeks, if both the House of Parliament passes resolutions disapproving it.	⊙ An ordinance issued by him ceases to operate on the expiry of six weeks from the reassembly. It may cease to operate even earlier than the prescribed six weeks, if a resolution disapproving it is passed by the legislative assembly and is agreed to by the legislative assembly and is agreed to by the legislative council (in case of a bicameral legislature).

⊙ He needs no instruction for making an ordinance.	⊙ He cannot make an ordinance without the instruction from the President in three cases: ► If a bill containing the same provisions would have required the previous sanction of the President for its introduction into the state legislature. ► If he would have deemed it necessary to reserve a bill containing the same provisions for the consideration of the President. ► If an act of the state legislature containing the same provisions would have been invalid without receiving the President's assent.

Articles Related to Governor

Article No.	Subject Matter
153.	Governors of states
154.	Executive power of state
155.	Appointment of Governor
156.	Term of office of Governor
157.	Qualifications for appointment as Governor
158.	Conditions of Governor's office
159.	Oath or affirmation by the Governor
160.	Discharge of the functions of the Governor in certain contingencies
161.	Power of the Governor to grant pardons and others
162.	Extent of executive power of state
163.	Council of ministers to aid and advise the Governor
164.	Other provisions as to ministers like appointments, term, salaries, and other
165.	Advocate-General for the state
166.	Conduct of business of the government of a state
167.	Duties of the Chief Minister regarding furnishing of information to the Governor, and so on
174.	Sessions of the state legislature, prorogation and dissolution
175.	Right of the Governor to address and send massages to the house or house of state legislature
176.	Special address by the Governor
200.	Assent to bills (i.e. assent of the Governor to the bills passed by the state legislature)
201.	Bills reserved by the Governor for consideration of the president

213.	Power of Governor to promulgate ordinances
217.	Governor being consulted by the President in the matter of the appointments of the judges of the High Courts
233.	Appointment of district judges by the Governor
234.	Appointments of persons (other than district judges) to the judicial service of the state by the Governor.

Chief Minister

In India, the Chief Minister is the real executive of a state. At the state level, he may be considered the counterpart of the Prime Minister. Though the head of the state is the Governor, the head of the government is the Chief Minister.

Article 163 of Constitution Provides that

- There shall be a Council of Ministers with the Chief Minister at the head to aid and advice the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.
- 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.
- 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 of Constitution 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 the Chief Minister, and the Ministers shall hold office during the pleasure of the Governor: Provided that in the States of Chhattisgarh, Jharkhand, 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.
  - The total number of Ministers, including the Chief Minister, in the Council of Ministers in a State shall not exceed fifteen per cent. of the total number of members of the Legislative Assembly of that State: Provided that the number of Ministers, including the Chief Minister in a State shall not be less than twelve: Provided further that where the total number of Ministers including the Chief Minister in the Council of Ministers in any State at the commencement of the Constitution (Ninety-first Amendment) Act, 2003 exceeds the said fifteen per cent or the number specified in the first proviso, as the case may be, then the total number of Ministers in that State shall be brought in conformity with the provisions of this clause within six months from such date as the President may by public notification appoint.
  - A member of the Legislative Assembly of a State or either House of the Legislature of a State having Legislative Council belonging to any political party who is disqualified for being a member of that House under paragraph 2 of the Tenth Schedule shall also be disqualified to be appointed as a Minister under clause (1) for duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or where he contests any election to the Legislative Assembly of a State or either House of the Legislature of a State having Legislative Council, as the case may be, before the expiry of such period, till the date on which he is declared elected, whichever is earlier.
- The Council of Ministers shall be collectively responsible to the Legislative Assembly of the State.
- 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.

- 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.

Appointment and term and Conditions for Office of Chief Minister

The Governor appoints the leader of the majority party in the State Legislative Assembly as the Chief Minister. He is the head of the State Council of Ministers. The State Council of Ministers revolves round him.

The Chief Minister has no fixed term of office. He remains in office so long as he commands support of the majority members of the Legislative Assembly. When he loses support in the legislature, he has to resign. The resignation of the Chief Minister must mean the resignation of the whole Council of Ministers in the State.

The Chief Minister must be a member of the State Legislature. If he is not a member of the State legislature at the time of his taking over charge, then he must be so within a period of six months.

Powers and Functions of the Chief Minister

The Chief Minister holds a pivotal position in the working of the State Government. He has enormous powers and vast responsibilities:

- In Relation to Council of Ministers
- In Relation to the Governor
- In Relation to State Legislature

In Relation to Council of Ministers

- The governor appoints only those persons as ministers who are recommended by the Chief Minister.
- He allocates and reshuffles the portfolios among ministers.
- He can ask a minister to resign or advise the governor to dismiss him in case of difference of opinion.
- He presides over the meetings of the council of ministers and influences its decisions.
- He guides, directs, controls and coordinates the activities of all the ministers.
- He can bring about the collapse of the council of ministers by resigning from office. Since the Chief Minister is the head of the council of ministers, his resignation or death automatically dissolves the council of ministers. The resignation or death of any other minister, on the other hand, merely creates a vacancy, which the Chief Minister may or may not like to fill.

In Relation to the Governor

- The Chief Minister is the channel of communication between the Governor and the other members of the Council of Ministers.
- He has to keep the Governor informed of the decisions taken by the Council of Ministers on various matters relating to State administration. He has to furnish such information relating to the administration of the State as the Governor may call for.
- The Governor can submit to the consideration of the Council of Ministers any matter on which decision has been taken by a Minister but which has not been considered by the Council of Ministers.
- The Governor appoints a large number of top officials of the State. He also summons and prorogues the sessions of State Legislature.
- All such powers are exercised by the Governor on the advice of the Chief Minister. The Chief Minister, however, has no right to give advice to the Governor in relation to the functions which he exercises in his discretion.

In Relation to State Legislature

- The Chief Minister is the leader of the State Legislative Assembly. All principal announcements of policy are made by him. The Chief Minister intervenes in debates of general importance.

- He advises the governor with regard to the summoning and proroguing of the sessions of the state legislature.
- He can recommend the dissolution of the legislative assembly to the governor at any time.
- He announces the government policies on the floor of the house.
- He can appease an angry House by promising immediate relief or concessions when needed.
- As the leader of the majority party in the Legislative Assembly, the Chief Minister has to see that party discipline is maintained in the House. He has also to defend the ministers of his Council of Ministers on the floor of the House from the criticisms of the opposition.
- The success of the State Government depends to a great extent upon the leadership of the Chief Mister. If he is strong, dynamic and efficient, them the government will definitely perform well and rise up to the expectations of the people

As Head of the State Cabinet, the Chief Minister enjoys the following Powers

- **Formation of the Ministry**

  The Chief Minister plays an important role in the formation of the Council of Ministers. On the advice of the Chief Minister, the Governor appoints the other Ministers of the Council of Ministers and distributes among them the portfolios.

- **Removal of Ministers**

  The Ministers hold office during the pleasure of the Governor. This, however, does not mean that the Governor can dismiss his Ministers at his will. The Government is in fact dependent on the Chief Minister. Therefore, the Chief Minister can reconstruct his Ministry as and when he likes. He may ask anyone of his colleagues to resign. If he declines, he will be dismissed by the Governor. As Chairman of the Cabinet, the Chief Minister has a position which enables him to impose his decision. It 'is he who controls the agenda for the Cabinet meetings. It is for the Chief Minister to accept or reject proposals for Cabinet discussion.

- **As a Chief administrator**

  The Chief Minister is the chief administrator of the State. All major decisions of the State Government are taken under his leadership. He is responsible for overall working of the state departments. He has also to maintain a good and harmonious relation with the Central Government.

  The Chief Minister supervises the activities of different ministries and advises them accordingly. He also coordinates the activities of different ministries. He has to see that the principle of collective responsibility is maintained by the Ministers.

  The Chief Minister plays an important role in making policies of the State Government. He has to ensure that the policies of the government do not go against public interest. His voice is final in policy decisions of the State Government.

Articles Related to Chief Minister

Article No.	Subject Matter
163.	Council of Ministers to aid and advise Governor
164.	Other provisions as to Ministers
166.	Conduct of business to the Government of a state
167.	Duties of Chief Minister as respect the furnishing of information to Governor, etc.
177.	Rights of Ministers as respects the Houses

State Council Of Ministers

As we know the executive power of the state is exercised in the name of the Governor, who is the Constitutional head of the state. But, the Governor has to have a Council of Ministers with the Chief Minister as its head to aid and advise him.

The Council of Ministers are appointed by the Governor on the advice of the Chief Minister and hold Office during his pleasure. It means that a minister can also be dismissed by the Governor on the advice of the chief minister.

On the pattern of the Union government, ministers in the state governments are of the following categories:

- Cabinet Ministers
- Ministers of State
- Deputy Ministers
- Parliamentary Secretaries

Appointment of Ministers

The chief minister is appointed by the governor. The other ministers are appointed by the governor on the advice of the chief minister. This means that the governor can appoint only those persons as ministers who are recommended by the chief minister. But, there should be a tribal welfare minister in Chhattisgarh, Jharkhand, Madhya Pradesh and Odisha. Usually, the members of the state legislature, either the legislative assembly or the legislative council, are appointed as ministers. A person who is not a member of either House of the state legislature can also be appointed as a minister. But, within six months, he must become a member (either by election or by nomination) of either House of the state legislature, otherwise, he ceases to be a minister.

A minister who is a member of one House of the state legislature has the right to speak and to take part in the proceedings of the other House. But, he can vote only in the House of which he is a member.

Powers and Functions of the Council of Ministers

The Council of Ministers performs the following functions:

Formulation of Policies

The Ministers formulate the policies of the government. The Cabinet takes decisions on all major problems—public health, relief to the disabled and unemployed, prevention of plant diseases, water storage, land tenures and production, supply and distribution of goods. When it has formulated a policy, the appropriate department carries it out.

Administration and Maintenance of Public Order

The executive power is to be exercised in such a way as to ensure compliance with State laws. The Constitution empowers the Governor to make -rules for the more convenient transaction of the business of the Government. All such rules are made on the advice of the Council of Ministers.

Appointments

The Governor has the power to appoint the Advocate-General and the Members of the State Public Service Commission. The Vice-Chancellors of the State Universities and members of various Boards and Commissions are all appointed by the Governor. The Governor cannot make these appointments at his will. He must exercise these functions on the advice of his ministers.

Guiding the Legislature

Most of the Bills passed by the Legislature are Government Bills, prepared in the ministries. They are introduced, explained and defended in the State Legislature by the Ministers. The Cabinet prepares the Governor's Address in which it sets forth its legislative programme at the commencement of the first session of the Legislature each year.

For weeks at a stretch the Cabinet's proposals take over every working moment of the House. The Cabinet makes sure that all government bills will be translated into laws.

Control over the State Exchequer

The State budget containing the estimates of income and expenditure for the ensuing year is placed by the Finance Minister before the State Legislature. The Legislature cannot take the initiative in the case of a Money Bill. Such a Bill must be recommended by the Governor and can be introduced only by a Minister. The initiative in financial matters lies with the Executive.

Execution of Central Laws and Decisions of the Union Government

The Union Government is empowered to give directions to the State-governments in certain matters. The States should exercise their executive power so as to ensure compliance with the laws made by Parliament. They should not do anything which would hamper the executive power of the Union.

Railways, for instance, is a Union subject, but police, including railway police, is a State Subject. The Union Government can give directions to the State Executive as to the measures to be taken for the protection of railways within the State

The social, economic and political condition of a State is dependent upon the performance of the Council of Ministers. If the ministers are efficient and dedicated, then the State will definitely work better. It also depends on how the Chief Minister is leading the Council of Ministers. If the ministers are efficient and dedicated, then the state will definitely work better. It also depends on how the Chief Minister is leading the Council of Ministers and maintaining unity and solidarity among the ministers.

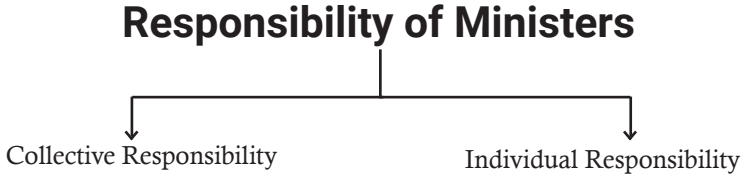
It shall be the duty of the Chief Minister of each state

- To communicate to the governor of the state all decisions of the council of ministers relating to the administration of the affairs of the state and proposals for legislation
- To furnish such information relating to the administration of the affairs of the state and proposals for legislation as the governor may call for
- If the governor so requires, to submit for the 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 council

Nature of Advice by Ministers

Article 163 provides for a council of ministers with the chief minister at the head to aid and advise the governor in the exercise of his functions except the discretionary ones. If any question arises whether a matter falls within the governor's discretion or not, the decision of the governor is final and the validity of anything done by him cannot be called in question on the ground that he ought or ought not to have acted in his discretion. Further, the nature of advice tendered by ministers to the governor cannot be enquired by any court. This provision emphasizes the intimate and the confidential relationship between the governor and the ministers.

In 1971, the Supreme Court ruled that a council of ministers must always exist to advise the governor, even after the dissolution of the state legislative assembly or resignation of a council of ministers. Hence, the existing ministry may continue in the office until its successor assumes charge. Again in 1974, the Court clarified that except in spheres where the governor is to act in his discretion, the governor has to act on the aid and advice of the council of ministers in the exercise of his powers and functions. He is not required to act personally without the aid and advice of the council of ministers or against the aid and advice of the council of ministers. Wherever the Constitution requires the satisfaction of the governor, the satisfaction is not the personal satisfaction of the governor but it is the satisfaction of the council of ministers.



Collective Responsibility

Article 164 clearly states that the council of ministers is collectively responsible to the legislative assembly of the state. This means that all the ministers own joint responsibility to the legislative assembly for all their acts of omission and commission. They work as a team and swim or sink together. When the legislative assembly passes a no-confidence motion against the council of ministers, all the ministers have to resign including those ministers who are from the legislative council. Alternatively, the council of ministers can advice the governor to dissolve the legislative assembly on the ground that the House does not represent the views of the electorate faithfully and call for fresh elections. The governor may not oblige the council of ministers which has lost the confidence of the legislative assembly.

The principle of collective responsibility also means that the cabinet decisions bind all cabinet ministers even if they deferred in the cabinet meeting. It is the duty of every minister to stand by the cabinet decisions and support them both within and outside the state legislature. If any minister disagrees with a cabinet decision and is not prepared to defend it, he must resign.

Individual Responsibility

It means that the ministers hold office during the pleasure of the governor. This means that the governor can remove a minister at a time when the council of ministers enjoys the confidence of the legislative assembly. But, the governor can remove a minister only on the advice of the chief minister. In case of difference of opinion or dissatisfaction with the performance of a minister, the chief minister can ask him to resign or advice the governor to dismiss him. By exercising this power, the chief minister can ensure the realization of the rule of collective responsibility.

Advocate-General for the State

An advocate general is a legal adviser to a state government. The Advocate General and his office defends and protects the interest of the State Government and gives invaluable legal guidance to the State Government in formulation of its policy and execution of its decisions.

Article 165 provides that -

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

  Every Minister and the Advocate-General for a State shall have the right to speak in, and otherwise take part in the proceedings of, the Legislative Assembly of the State, or, in the case of a State having a Legislative Council, Both Houses, and to speak in, and otherwise to take part in the proceedings of, any committee of the Legislature of which he may be named a member but shall not, by virtue of this Article, be entitled to vote.

  The Hon'ble supreme Court of India taking into account the above mentioned Articles has held that:-

  "The Office of and Advocate General is an exalted one. He is the Supreme law officer of the State"

  "Under Article 177 he is conferred the right to audience before the Legislature of a State both in the Assembly and the Council. Infect, he is treated on a per with Minister."

Strength of Legislative Assemblies and Legislative Councils

S. No.	Name of the State/ Union Territory	Number of Seats in Legislative Assembly	Number of Seats in Legislative Council
	I. STATES		
1.	Andhra Pradesh	175	58[18a]
2.	Arunachal Pradesh	60	-
3.	Assam	126	-
4.	Bihar	243	75
5.	Chhattisgarh	90	-
6.	Goa	40	-
7.	Gujarat	182	-
8.	Haryana	90	-
9.	Himachal Pradesh	68	-
10.	Jharkhand	81	-
11.	Karnataka	224	75
12.	Kerala	140	-
13.	Madhya Pradesh	230.	-
14.	Maharashtra	288	78
15.	Manipur	60	-
16.	Meghalaya	60	-
17.	Mizoram	40	-
18.	Nagaland	60	-
19.	Odisha	147	-
20.	Punjab	117	-
21.	Rajasthan	200	-
22.	Sikkim	32	-
23.	Tamil Nadu	234	-
24.	Telangana	119	40
25.	Tripura	60	-
26.	Uttarakhand	70	-
27.	Uttar Pradesh	403	100
28.	West Bengal	294	-
	II. UNION TERRITORIES		

1.	Delhi	70	-
2.	Puducherry	30	-
3.	Jammu & Kashmir	83[19]	-

State Legislature

Legislation provides the framework for policy formulation and arms the government with powers to implement the policies. At the state level, the function of providing the necessary legislative framework is performed by State Legislature. Our Constitution provides that every state shall have at least one house, viz., the Legislative Assembly comprising 60 to 500 members chosen by direct election on the basis of adult suffrage from territorial constituencies. In addition, any state can create a second house, viz., Legislative Council if it so desires. This can be done by a resolution of the Assembly passed by a special majority (i.e., a majority of total membership of the Assembly not being less than two-thirds of the members actually present and voting) followed by an Act of Parliament. By the same process, an existing Legislative Council can be abolished also.

The Legislative Assembly is known as lower House or popular House. The Legislative Council is known as upper House. Just as Lok Sabha has been made powerful at the Union level, the Legislative Assembly has been made a powerful body in the States.

Article 168 provides for a state legislature in every state. It further provides that it shall consist of the Governor, the legislative assembly and a legislative council if opted for by a state.

> Articles 168 to 212 in Part VI of the Constitution deal with the organisation, composition duration, officers, procedures, privileges, powers and so on of the state legislature

Legislative Assembly

There is a Legislative Assembly (Vidhan Sabha) in every State. It represents the people of State. The members of Vidhan Sabha are directly elected by people on the basis of universal adult franchise. They are directly elected by all adult citizens registered as voters in the State.

Composition

Strength

The Legislative Assembly, i.e. Vidhan Sabha is the real legislature even in those States that have bicameral legislatures. According to the Constitution of India, a State Legislative Assembly shall ***not have more than 500 members and not less than 60 members.*** However, very small States like Goa, Sikkim and Mizoram have been allowed to have less than 60 members. Article 170 describes the composition of the Legislative Assembly which is the lower House of the state legislature. There are certain qualifications prescribed by the Constitution for being elected as an M. L. A. The candidate must:

- Be a citizen of India;
- Have attained the age of 25 years;
- Have his/her name in the voters' list;
- Not hold any office of profit; and
- Not be a government servant

Reservation and Nomination

Seats are reserved for the Scheduled Castes and Scheduled Tribes in the Legislative Assembly. If the Governor feels that the Anglo Indian Community is not adequately represented, he/she may nominate one person of that community in the State Legislative Assembly. The Legislative Assembly is an elected body. Its members, M. L. As. are elected by the people based on the principle of universal adult franchise.Territorial Constituencies

For the purpose of holding direct elections to the assembly, each state is divided into territorial constituencies. The demarcation of these constituencies is done in such a manner that the ratio between the population of each constituency and the number of seats allotted to it is the same throughout the state. In other words, the Constitution ensures that there is uniformity of representation between different constituencies in the state. The expression 'population' means, the population as ascertained at the last preceding census of which the relevant figures have been published.

Readjustment after each census

After each census, a readjustment is to be made in the (a) total number of seats in the assembly of each state and (b) the division of each state into territorial constituencies. The delimitation of constituencies is done by parliament. Accordingly, Parliament has enacted the Delimitation Commission Acts in 1952, 1962, 1972 and 2002 for this purpose. The 84th Amendment Act of 2001 empowered the government to undertake readjustment and rationalization of territorial constituencies in a state on the basis of the population figures of 1991 census. Later, the 87thAmendment Act of 2003 provided for the delimitation of constituencies on the basis of 2001 census and not 1991 census. However, this can be done without altering the total number of seats in the assembly of each state.

Tenure

The duration of every assembly is 5 years. It may be dissolved earlier by the Governor. The term of 5 years may be extended in case a proclamation of Emergency under Article 352 is in operation. The life of the Assembly may be extended by parliament by law for a period of one year at a time. But this period cannot go beyond 6 months from the date the proclamation has ceased to operate.

Legislative Councils

State legislature is not necessarily bicameral. The legislative assembly is a must House in the state legislature but the legislative council is not. It has been left to the state legislature under Article 169 to have or not to have a legislative council.

Provision for creating Legislative council

The procedure for abolition or creation of a legislative council has been laid down in Article 169 itself. Under its provision, if the legislative assembly of the state passes a resolution by a 2/3rd majority to this effect, then Parliament can provide for creation of abolition of a legislative council in that state. This is not to be deemed as an amendment of the constitution and therefore it does not require to follow the procedure laid down in Article 368.

Composition of Legislative Council

The upper chamber of the State Legislature i.e. the Legislative Council or Vidhan Parishad shall not have more than one third of the total membership of the State Legislative Assembly but not less than 40. The Legislative Council in Jammu &Kashmir has 36 members as an exception. The members of the Legislative Council are partly elected indirectly and partly nominated.

The composition of the Legislative Council is as follows:

- One-third members are elected by the members of local bodies i.e. Municipalities; District Boards and others in the State;
- Another one-third members are elected by the members of the Legislative Assembly;

- One-twelfth members are elected by the electorate consisting of graduates of the State of not less than three years standing;
- Another one-twelfth are elected by the electorate consisting of teachers having teaching experience of at least three years in the educational institutions within the State, but these institutions must not be lower in standard than secondary schools; and
- The remaining one-sixth members are nominated by the Governor of the State.

Duration of the Council

The Vidhan Parishad is a permanent house, and hence it is not dissolved. Members are elected/nominated for a period of six years. One-third of its members retire after every two years. The retiring members are eligible for re-election. The State Legislature meets twice a year at least and the interval between two sessions cannot be more than six months.

Qualification for Membership

A person is qualified to be chosen to fill a seat in the legislature of a state if he,

- Is a citizen of India. He must also subscribe to the oath as set out in the Third schedule.
- Is in the case of the Legislative Assembly not less than 25 years of age and in the case of legislative council not less than 30 years of age.
- Representation of Peoples' Act, 1951 has prescribed that only such person shall be eligible to be a member of the state legislature who is himself an elector (whose name appears in the electoral roll) for any legislative assembly constituency in that state.

Disqualification for Membership

The disqualification is given in **Article 191** and is analogous to those laid down in Article 102 applicable to members of Parliament. A person shall be disqualified from being chosen as or remaining a member of the legislative assembly or legislative council of a state if he,-

- Holds any office of profit under the central or state government. The office of a minister of the union or a state is not an office of profit. The State Legislature may by law declare certain offices as not attracting disqualification.
- Is of unsound mind.
- Is an undischarged insolvent.
- Is not a citizen of India or has voluntarily acquired the citizenship of a foreign state or is under an acknowledgement of allegiance or adherence to a foreign state.
- Is disqualified by or under any law made by Parliament.

  Absence as Disqualification: If a member absents himself from all meetings of the House for a period of 60 days without the permission of the House then the House may declare his seat vacant **[Article 190(4)].**

  Decision of Disqualification: If a question arises as to whether a member of a House has become subject to a disqualification the question shall be referred for the decision of the Governor. The Governor shall obtain the opinion of the election commission. The opinion of the commission is binding on the Governor. He must act according to the opinion [Article 192(2)].

  Disqualification on the Ground of Defection: member of legislative assembly or council becomes disqualified on the ground of defection under anti-defection law. The Speaker or the Chairman as the case may be has the power to disqualify a member on grounds of anti-defection law. His decision shall be final in the matter. However, The Supreme Court has struck down this provision of the anti-defection law and made it subject to judicial review.

  Accordingly, the Parliament has prescribed a number of additional disqualifications in the **Representation of People Act (1951).** These are similar to those for Parliament. These are mentioned here:
- He must not have been found guilty of certain election offences or corrupt practices in the elections.

- He must not have been convicted for any offence resulting in imprisonment for two or more years. But, the detention of a person under a preventive detention law is not a disqualification.
- He must not have failed to lodge an account of his election expenses within the time.
- He must not have any interest in government contracts, works or services.
- He must not be a director or managing agent nor hold an office of profit in a corporation in which the government has at least 25 per cent share.
- He must not have been dismissed from government service for corruption or disloyalty to the state.
- He must not have been convicted for promoting enmity between different groups or for the offence of bribery.
- He must not have been punished for preaching and practicing social crimes such as untouchability, dowry and sati.

Vacation of Seats

In the following cases, a member of the state legislature vacates his seat:

- **Double Membership:** A person cannot be a member of both Houses of state legislature at one and the same time. If a person is elected to both the Houses, his seat in one of the Houses falls vacant as per the provisions of a law made by the state legislature.
- **Disqualification:** If a member of the state legislature becomes subject to any of the disqualifications, his seat becomes vacant.
- **Resignation:** A member may resign his seat by writing to the Chairman of legislative council or Speaker of legislative assembly, as the case may be. The seat falls vacant when the resignation is accepted.
- **Absence:** A House of the state legislature can declare the seat of a member vacant if he absents himself from all its meeting for a period of sixty days without its permission.
- **Other Cases:** A member has to vacate his seat in the either House of state legislature,
  - if his election is declared void by the court,
  - if he is expelled by the House,
  - if he is elected to the office of president or office of vice-president,
  - if he is appointed to the office of governor of a state

Presiding Officers of State Legislature

Speaker and Deputy Speaker

Article 178 provides for the post of the Speaker and Deputy Speaker of legislative assembly. They are elected by the House itself. They can be removed only by special majority of the House. The Speaker is elected by the assembly itself from amongst its members.

Vacation: Usually, the Speaker remains in office during the life of the assembly. However, he vacates his office earlier in any of the following three cases:

- If he ceases to be a member of the assembly;
- If he resigns by writing to the deputy speaker; and
- If he is removed by a resolution passed by a majority of all the then members of the assembly. Such a resolution can be moved only after giving 14 days advance notice

Deputy Speaker of Assembly

Like the Speaker, the Deputy Speaker is also elected by the assembly itself from amongst its members. He is elected after the election of the Speaker has taken place. Like the Speaker, the Deputy Speaker remains in office

usually during the life of the assembly. However, he also vacates his office earlier in any of the following three cases:

- if he ceases to be a member of the assembly;
- if he resigns by writing to the speaker; and
- If he is removed by a resolution passed by a majority of all the then members of the assembly. Such a resolution can be moved only after giving 14 days' advance notice.

Powers and duties of Speaker:

- He maintains order and decorum in the assembly for conducting its business and regulating its proceedings. This is his primary responsibility and he has final power in this regard.
- He is the final interpreter of the provisions of (a) the Constitution of India, (b) the rules of procedure and conduct of business of assembly, and (c) the legislative precedents, within the assembly.
- He adjourns the assembly or suspends the meeting in the absence of a quorum.
- He does not vote in the first instance. But, he can exercise a casting vote in the case of a tie.
- He can allow a 'secret' sitting of the House at the request of the leader of the House.
- He decides whether a bill is a Money Bill or not and his decision on this question is final.
- He decides the questions of disqualification of a member of the assembly, arising on the ground of defection under the provisions of the Tenth Schedule.
- He appoints the chairmen of all the committees of the assembly and supervises their functioning. He himself is the chairman of the Business Advisory Committee, the Rules Committee and the General Purpose Committee.

Chairman of Council

The presiding officer of the Vidhan Parishad (Legislative Council) is known as the Chairman, who is elected by its members. The business of Vidhan Parishad is conducted by the Chairman in a similar manner as the Speaker.

Vacation of Office

- If he ceases to be a member of the council;
- If he resigns by writing to the deputy chairman; and
- If he is removed by a resolution passed by a majority of all the then members of the council. Such a resolution can be moved only after giving14 days advance notice

  As a presiding officer, the powers and functions of the Chairman in the council are similar to those of the Speaker in the assembly. However, the Speaker has one special power which is not enjoyed by the Chairman. The Speaker decides whether a bill is a Money Bill or not and his decision on this question is final.

Legislative Procedure

The procedure to be followed by a state legislature is broadly similar to that followed by the Parliament. However, constitution amendment bill cannot be introduced in a state legislature and there is no provision for a joint session of both House of the state legislature to resolve a deadlock over a Bill.

Money Bill

The Money Bill can originate in the legislative assembly only. The legislative council must return the Bill to the legislative assembly along with its recommendations within a period of 14 days from the date of its receipt.

The legislative assembly may accept or reject all or any of these recommendations. In either case, the Money Bill is deemed to have been passed by both the Houses in the form in which the legislative assembly passed it. If the legislative council does not return a Money Bill within 14 days, it shall be deemed to have been passed by both Houses.

Ordinary Bill

- Such a Bill can originate in either House
- If a Bill is passed by the Assembly, the Council may reject the Bill, modify it; or may not pass it for three months. If the Bill is again passed by the Assembly with or without modification, the Council, on its second journey, may only delay it by one month
- If a Bill originates in the Council and is rejected by the Assembly, the matter ends.

  Thus, in every way, the supremacy of the Assembly is established; more so, in case of Money Bills. The dispute between two houses is always resolved according to the will of the Assembly. This is in contrast to the Union Legislature where a dispute between the two Houses is resolved by a joint sitting. This is probably in recognition of the fact that the Upper House in Union Legislature is representative of the states.

Assent of the Governor

Every bill, after it is passed by the assembly or by both the Houses in case of a bicameral legislature, is presented to the governor for his assent. There are four alternatives before the governor:

- He may give his assent to the bill;
- He may withhold his assent to the bill;
- He may return the bill for reconsideration of the House or Houses;
- He may reserve the bill for the consideration of the President.

  If the governor gives his assent to the bill, the bill becomes an Act and is placed on the Statute Book. If the governor withholds his assent to the bill, the bill ends and does not become an Act. If the governor returns the bill for reconsideration and if the bill is passed by the House or both the Houses again, with or without amendments, and presented to the governor for his assent, the governor must give his assent to the bill. Thus, the governor enjoys only a suspensive veto.

Assent of the President

When a bill is reserved by the governor for the consideration of the President, the President may either give his assent to the bill or withhold his assent to the bill or return the bill for reconsideration of the House or Houses of the state legislature. When a bill is so returned, the House or Houses have to reconsider it within a period of six months. The bill is presented again to the presidential assent after it is passed by the House or Houses with or without amendments. It is not mentioned in the Constitution whether it is obligatory on the part of the president to give his assent to such a bill or not.

Sessions of State Legislature

Summoning

The governor from time to time summons each House of state legislature to meet. The maximum gap between the two sessions of state legislature cannot be more than six months, i.e., the state legislature should meet at least twice a year. A session of the state legislature consists of many sittings.

Adjournment

An adjournment suspends the work in a sitting for a specified time which may be hours, days or weeks. Adjournment sine die means terminating a sitting of the state legislature for an indefinite period. The power of the adjournment as well as adjournment sine die lies with the presiding officer of the House.

Prorogation

The presiding officer (Speaker or Chairman) declares the House adjourned sine die, when the business of the session is completed. Within the next few days, the governor issues a notification for prorogation of the session. However, the governor can also prorogue the House which is in session. Unlike an adjournment, a prorogation terminates a session of the House.

Dissolution

The legislative council, being a permanent house, is not subject to dissolution. Only the legislative assembly is subject to dissolution. Unlike a prorogation, dissolution ends the very life of the existing House, and a new House is constituted after the general elections are held.

The position with respect to lapsing of bills on the dissolution of the assembly is mentioned below:

- A Bill pending in the assembly lapses (whether originating in the assembly or transmitted to it by the council).
- A Bill passed by the assembly but pending in the council lapses.
- A Bill pending in the council but not passed by the assembly does not lapse.
- A Bill passed by the assembly (in a unicameral state) or passed by both the houses (in a bicameral state) but pending assent of the governor or the President does not lapse.
- A Bill passed by the assembly (in a unicameral state) or passed by both the Houses (in a bicameral state) but returned by the president for reconsideration of House (s) does not lapse.

Quorum

Quorum is the minimum number of members required to be present in the House before it can transact any business. It is ten members or one-tenth of the total number of members of the House (including the presiding officer), whichever is greater. If there is no quorum during a meeting of the House, it is the duty of the presiding officer either to adjourn the House or to suspend the meeting until there is a quorum.

Voting in House

All matters at any sitting of either House are decided by a majority of votes of the members present and voting excluding the presiding officer. Only a few matters which are specifically mentioned in the Constitution like removal of the speaker of the assembly, removal of the Chairman of the council and so on require special majority, not ordinary majority. The presiding officer (i.e., Speaker in the case of assembly or chairman in the case of council or the person acting as such) does not vote in the first instance, but exercises a casting vote in the case of an equality of votes.

Comparing Legislative Procedure in the Parliament and State Legislature

With Regard to Ordinary Bills

Parliament	State legislature
It can be introduced in either House of the Parliament.	It can be introduced in either House of the state legislature
It can be introduced either by a minister or by a private member	It can be introduced either by a minister or by private member

It passes through first reading, second reading and third reading in the originating House.	It passes through first reading, second reading and third reading in the originating House
It is deemed to have been passed by the Parliament only when both the Houses have agreed to it, either with or without amendments	It is deemed to have been passed by the state legislature only when both the Houses have agreed to it, either with or without amendments
A deadlock between the two Houses takes place when the second House, after receiving a bill passed by the first House, rejects the bill or proposes amendments that are not acceptable to the first House or does not pass the bill within six months.	A deadlock between the two Houses takes place when the legislative council, after receiving a bill passed by the legislative assembly, rejects the bill or proposes amendments that are not acceptable to the legislative assembly or does not pass the bill within three months.
The Constitution provides for the mechanism of joint sitting of two Houses of the Parliament to resolve a deadlock between them over the passage of a bill	The Constitution does not provide for the mechanism of joint sitting of two Houses of the state legislature to resolve a deadlock between them over the passage of a bill.
The Lok Sabha cannot override the Rajya Sabha by passing the bill for the second time and vice versa. A joint sitting is the only way to resolve a deadlock between the two Houses.	The legislative assembly can override the legislative council by passing the bill for the second time. When a bill is passed by the assembly for the second time and transmitted to the legislative council, if the legislative council rejects the bill again, or proposes amendments that are not acceptable to the legislative assembly, or does not pass the bill within one month, then the bill is deemed to have been passed by both the Houses in the form in which it was passed by the legislative assembly for the second time.

In Relation to Money Bills

- It can be introduced only in the legislative assembly and not in the legislative council on the recommendation of Governor.
- It can be introduced only by a minister and not by a private member.
- It cannot be rejected or amended by the legislative council. It should be returned to the legislative assembly within 14 days, either with or without amendments.
- If the legislative assembly accepts any recommendation, the bill is then deemed to have been passed by both the Houses in the modified form.
- If the legislative assembly does not accept any recommendation, the bill is then deemed to have been passed by both the Houses in the form originally passed by the legislative assembly without any change.
- If the legislative council does not return the bill to the legislative assembly within 14 days, the bill is deemed to have been passed by both the Houses at the expiration of the said period in the form originally passed by the legislative assembly.
- The Constitution does not provide for the resolution of any deadlock between the two Houses. This is because, the will of the legislative assembly is made to prevail over that of legislative council, if the latter does not agree to the bill passed by the former.

Privileges of State Legislature

Privileges are a sum of special rights, immunities and exemptions enjoyed by the Houses of state legislature, their committees and their members. They are necessary in order to secure the independence and effectiveness of their actions. Without these privileges, the Houses can neither maintain their authority, dignity and honour nor can protect their members from any obstruction in the discharge of their legislative responsibilities.

Collective Privileges

The privileges belonging to each House of the state legislature collectively are:

- It has the right to publish its reports, debates and proceedings and also the right to prohibit others from publishing the same.
- It can exclude strangers from its proceedings and hold secret sittings to discuss some important matters.
- It can make rules to regulate its own procedure and the conduct of its business and to adjudicate upon such matters.
- It can punish members as well as outsiders for breach of its privileges or its contempt by reprimand, admonition or imprisonment (also suspension or expulsion, in case of members).
- It has the right to receive immediate information of the arrest, detention, conviction, imprisonment and release of a member.
- It can institute inquiries and order the attendence of witnesses and send for relevant papers and records.
- The courts are prohibited to inquire into the proceedings of a House or its Committees.
- No person (either a member or outsider) can be arrested, and no legal process (civil or criminal) can be served within the precincts of the House without the permission of the presiding officer.

Individual Privileges

The privileges belonging to the members individually are:

- They cannot be arrested during the session of the state legislature and 40 days before the beginning and 40 days after the end of such session. This privilege is available only in civil cases and not in criminal cases or preventive detention cases.
- They have freedom of speech in the state legislature. No member is liable to any proceedings in any court for anything said or any vote given by him in the state legislature or its committees. This freedom is subject to the provisions of the Constitution and to the rules and standing orders regulating the procedure of the state legislature.
- They are exempted from jury service. They can refuse to give evidence and appear as a witness in a case pending in a court when the state legislature is in session

Legislative Control over Administration

Apart from providing necessary legislative support to the executive, the Legislature also acts as an instrument of popular control over administration. In a Parliamentary democracy like ours, this control is exercised in following forms:

Assembly Questions

The members of the Assembly have a right to ask questions from the government. They can also ask supplementary questions. This device keeps the government on its toes. Whenever weaknesses are noticed, the government is compelled to promise and take corrective action.

Discussions

Apart from asking questions, the members may ask for discussions over important matters. They may also bring forward Call Attention Motions and Adjournment Motions on important public matters. Even if such motions are not allowed, a lot of information has to be supplied by the government and some discussion does take place. Here again the government is kept on a tight leash and has to answer the representatives of the people.

Financial Control by Budget

No money can be raised and no expenditure can be incurred without a vote by the Legislature. By controlling the purse strings, the Legislature controls the programmes and activities of the government. It is true that by virtue of its majority in the Legislature, the government may ultimately get the money it wants voted, but during the process, a lot of discussion takes place. This keeps the government in touch with the needs of the people. The discussion also highlights the weaknesses of the administration in the implementation of the voted programmes.

Control through Legislsative Committees

Apart from the Public Accounts Committee mentioned earlier, there are several other committees, viz., Estimates Committee, Committee on Public Undertakings, Committee on Assurances, etc. These committees examine the various aspects of the working of the government and make useful suggestions. They also criticize the government for its failures and bring these failures to the notice of the Legislature and the people. This is a good device of exercising control over the government, as the Assembly is too unwieldy a body to examine the working of the government in detail.

Articles Related to State Legislature

Article No.	Subject-matter
	General
168.	Constitution of Legislatures in states
169.	Abolition or creation of Legislative Councils in states
170.	Composition of the Legislative Assemblies
171.	Composition of the Legislative Councils
172.	Duration of State Legislatures
173.	Qualification for membership of the State Legislature
174.	Sessions of the State Legislature, prorogation and dissolution
175.	Right of Governor to address and send messages to the House or Houses
176.	Special address by the Governor
177.	Right of Ministers and Advocate-General as respects the Houses
	Officers of the State Legislature
178.	The Speaker and Deputy Speaker of the Legislative Assembly
179.	Vacation and resignation of, and removal from, the offices of Speaker and Deputy Speaker
180.	Power of the Deputy Speaker or other person to perform the duties of the office of, or act as, Speaker
181.	The Speaker or the Deputy Speaker not to preside while a resolution for his removal from office is under consideration
182.	The Chairman and Deputy Chairman of the Legislative Council
183.	Vacation and resignation of, and removal from, the offices of Chairman and Deputy Chairman

184.	Power of the Deputy Chairman or other person to perform the duties of the office of, or to act as, Chairman
185.	The Chairman or the Deputy Chairman not to preside while a resolution for his removal from office is under consideration
186.	Salaries and allowances of the Speaker and Deputy Speaker and the Chairman and Deputy Chairman
187.	Secretariat of State Legislature
Conduct of Business	
188.	Oath or affirmation by members
189.	Voting in Houses, power of Houses to act notwithstanding vacancies and quorum
Disqualifications of Members	
190.	Vacation of seats
191.	Disqualifications for membership
192.	Decision on questions as to disqualifications of members
193.	Penalty for sitting and voting before making oath or affirmation under Article 188 or when not qualified or when disqualified
Powers, Privileges an Immunities of State Legislatures and their Members	
194.	Powers, Privileges, etc., of the House of Legislatures and of the members and committees thereof
195.	Salaries and allowances of members
Legislative Procedure	
196.	Provisions as to introduction and passing of Bills
197.	Restriction on powers of Legislative Council as to Bills other than Money Bills
198.	Special procedure in respect of Money Bills
199.	Definition of "Money Bills'
200.	Assent of Bills
201.	Bills reserved for consideration
Procedure in Financial Matters	
202.	Annual financial statement
203.	Procedure in Legislature with respect to estimates
204.	Appropriation Bills
205.	Supplementary, additional or excess grants
206.	Votes on account, votes of credit and exceptional grants
207.	Special provisions as to financial Bills

Procedure Generally	
208.	Rules of procedure
209.	Regulation by law of procedure in the Legislature of the state in relation to financial business
210.	Language to be used in the Legislature
211.	Restriction on discussion in the Legislature
212.	Courts not to inquire into proceedings of the Legislature
Legislative Powers of the Governor	
213.	Power of Governor to promulgate Ordinances during recess of Legislature

Union Territories

In 1956 the states were reorganized on linguistic basis under 7th Amendment Act, 1956 which reduced the categories of states to only two categories viz. States and Union Territories. The Union Territories were created and placed under central administration due to their strategic, ethnic and political reasons. Under Article 1 of the Constitution, the territory of India comprises three categories of territories: (a) territories of the states; (b) union territories; and (c) territories that may be acquired by the Government of India at any time. At present, there are twenty-nine states, seven union territories and no acquired territories.

Administration of Union Territories (Article 239)

A Union Territory is administered by the President acting through an administrator to be appointed by him with such designation as he may specify. There is no uniformity in the designation to the administrator. It is at some places Lieutenant Governor (e.g. Delhi and Puducherry) at other Chief Commissioner or Administrator. The Governor of state may be appointed as Administrator of an adjoining Union Territory. An Administrator of Union Territories is not a head of state like a Governor but is an agent of the President.

Legislature and Council of Ministers in Union Territories (Article 239A)

In 1962 Article 239A was inserted in the constitution empowering Parliament to create legislature or a council of ministers or both for some of the Union Territories. In exercise of this power the Parliament passed the Government of Union Territories Act, 1963, which created a legislature as well as a council of ministers for some of the union territories. As such Only Delhi and Puducherry have Legislature as well as Council of Ministers. Creation of legislative Assembly or a council of ministers by enacting a law is not treated as an amendment of the constitution for the purpose of Article 368.

Special Provisions for Delhi

The 69th Amendment Act, 1992 has added two new Article 239 AA and Article 239AB under which the union territory of Delhi has been given a special status. Article 239AA provides that the union territory of Delhi shall now be called the National Capital Territory of Delhi and its administrator shall be known as Lt. Governor. It also creates a legislative assembly for Delhi which can make laws on the state list and concurrent list except on these matters: public order, land and police. It also provides for a council of ministers for Delhi consisting of not more than 10% of the total number of members in the assembly. The President shall make appointments to the council of ministers, including the Chief Minister.

Position of President and Administrator

Union territories are centrally administered under Article 239. They do not get merged with the central government and form part of no state. They do not loose their existence as a separate entity though the central government controls them. The administrator function as delegate of the President and will have to act under the orders of the President and that the central government.

Constitutional Break Down

If a situation arises in which the administration of the national capital territory cannot be carried on in accordance with Article 239AA or the Act of 1991 etc. the President may on receipt of a report from the Lieutenant Governor or otherwise suspend the operation of the above laws and make such incidental or consequential provisions as may appear to him necessary. [Article 239 AB].

The President may take action on the report of the Lieutenant Governor of otherwise. This provision resembles Article 356.

Ordinance Making Power

Article 239 B gives the Administrator power to promulgate an ordinance when the legislative assembly of a Union Territory is not in session. An ordinance may be promulgated only after obtaining instructions from the President.

Power of the President to Make Regulations (Article 240)

The President has the power to make regulations for the peace, order and good governance of the Union Territory of:

- Andaman and Nicobar.
- Lakshadweep
- Dadra and Nagar Haveli
- Daman and Diu

  Since these territories do not have a legislature, the legislative function is assigned to the President.

High Court for Union Territory (Article 241)

Parliament may by-law constitute a High Court for a Union Territory or declare the High Court of a state having jurisdiction over a Union Territory. The Punjab and Haryana High Court has jurisdiction over Chandigarh. The Kerala High Court caters to Lakshadweep. The Andaman and Nicobar Islands are under the Calcutta High Court. Puducherry falls under Madras High Court. The Bombay High Court is the High Court for Dadra and Nagar Haveli as also for Daman and Diu. Delhi is the only Union Territory having its own High Court since 1966.

Acquired Territories

There are no separate provisions in the Constitution relating to the administration of Acquired Territories but the provisions relating to Union Territories will extend by virtue of the definition.

Thus the Territory of Pondicherry, Karaikal, Yanama and Mahe, was being administered by the President of India through a Chief Commissioner until it was made a Union Territory, in 1962. Parliament has plenary power of legislation regarding such territory as in the case of Union Territories.

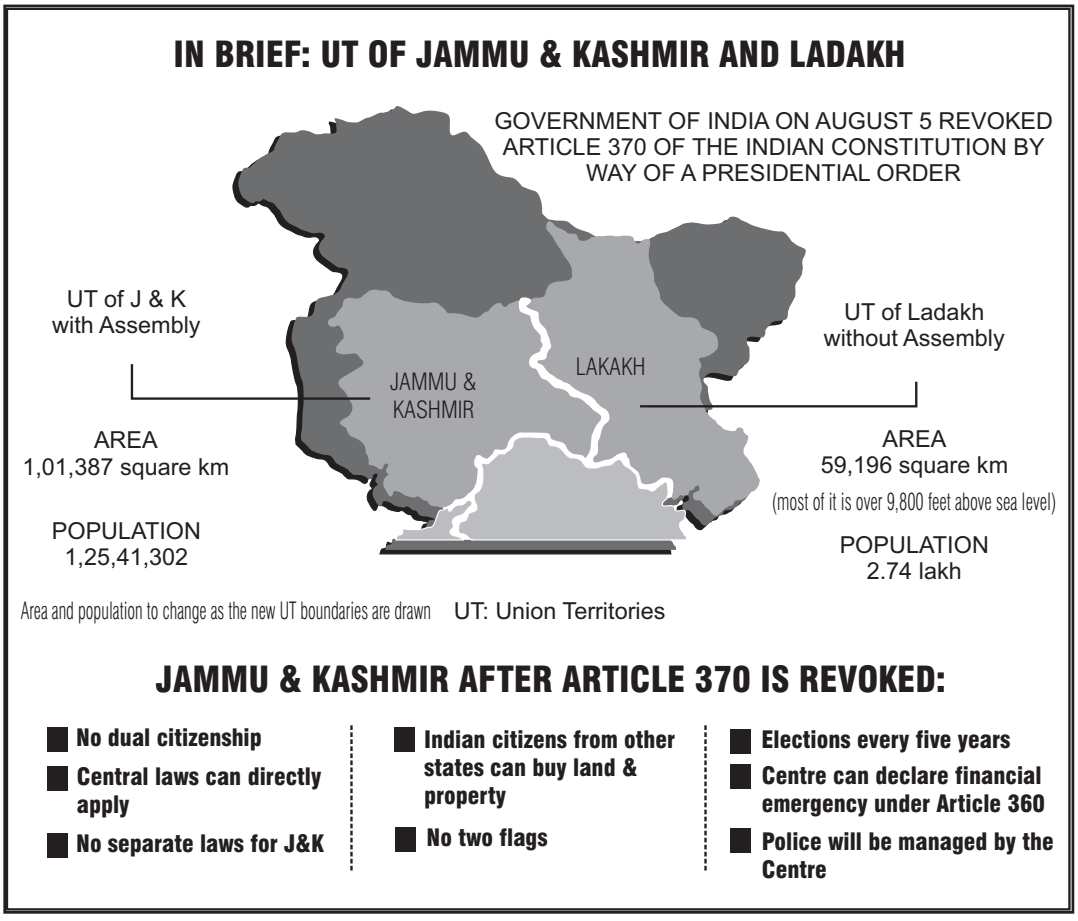
UT of Jammu and Kashmir

Abrogation of Article 370

- On 5th of August 2019, the President of India promulgated the Constitution (Application to Jammu and Kashmir) Order, 2019.
- The order effectively abrogates the special status accorded to Jammu and Kashmir under the provision of Article 370 - whereby provisions of the Constitution which were applicable to other states were not applicable to Jammu and Kashmir (J&K).
- In addition, the Jammu and Kashmir Reorganisation Act was passed by the parliament.

The Jammu and Kashmir Reorganisation Act, 2019

- **Reorganisation of Jammu and Kashmir:** The Act reorganizes the state of Jammu and Kashmir into: (i) the Union Territory of Jammu and Kashmir with a legislature, and (ii) the Union Territory of Ladakh without a legislature. The Union Territory of Ladakh will comprise Kargil and Leh districts, and the Union Territory of Jammu and Kashmir will comprise the remaining territories of the existing state of Jammu and Kashmir.
- **Lieutenant Governor:** The Union Territory of Jammu and Kashmir will be administered by the President, through an administrator appointed by him known as the Lieutenant Governor. The Union Territory of Ladakh will be administered by the President, through a Lieutenant Governor appointed by him.
- **Legislative Assembly of Jammu and Kashmir:** The Bill provides for a Legislative Assembly for the Union Territory of Jammu and Kashmir. The total number of seats in the Assembly will be 107. Of these, 24 seats will remain vacant on account of certain areas of Jammu and Kashmir being under the occupation of Pakistan. Further, seats will be reserved in the Assembly for Scheduled Castes and Scheduled Tribes in proportion to their population in the Union Territory of Jammu and Kashmir. In addition, the Lieutenant Governor may nominate two members to the Legislative Assembly to give representation to women, if they are not adequately represented.



The Assembly will have a term of five years, and the Lieutenant Governor must summon the Assembly at least once in six months. The Legislative Assembly may make laws for any part of the Union Territory of Jammu and Kashmir related to: (i) any matters specified in the State List of the Constitution, except "Police" and "Public Order", and (ii) any matter in the Concurrent List applicable to Union Territories. Further, Parliament will have the power to make laws in relation to any matter for the Union Territory of Jammu and Kashmir.

- **Council of Ministers:** The Union Territory of Jammu and Kashmir will have a Council of Ministers of not more than ten percent of the total number of members in the Assembly. The Council will aide and advise the Lieutenant Governor on matters that the Assembly has powers to make laws. The Chief Minister will communicate all decisions of the Council to the Lieutenant Governor.
- **High Court:** The High Court of Jammu and Kashmir will be the common High Court for the Union Territories of Ladakh, and Jammu and Kashmir. Further, the Union Territory of Jammu and Kashmir will have an Advocate General to provide legal advice to the government of the Union Territory.
- **Legislative Council:** The Legislative Council of the state of Jammu and Kashmir will be abolished. Upon dissolution, all Bills pending in the Council will lapse.
- **Advisory Committees:** The central government will appoint Advisory Committees, for various purposes, including: (i) distribution of assets and liabilities of corporations of the state of Jammu and Kashmir between the two Union Territories, (ii) issues related to the generation and supply of electricity and water, and (iii) issues related to the Jammu and Kashmir State Financial Corporation. These Committees must submit their reports within six months to the Lieutenant Governor of Jammu and Kashmir, who must act on these recommendations within 30 days.
- **Extent of laws:** The Schedule lists 106 central laws that will be made applicable to Union Territories of Jammu and Kashmir and Ladakh on a date notified by the central government. These include the Aadhaar Act, 2016, the Indian Penal Code, 1860, and the Right to Education Act, 2009. Further, it repeals 153 state laws of Jammu and Kashmir. In addition, 166 state laws will remain in force, and seven laws will be applicable with amendments. These amendments include lifting of prohibitions on lease of land to persons who are not permanent residents of Jammu and Kashmir.

Rules for administration in the Union Territory of Jammu and Kashmir:

The **Ministry of Home Affairs (MHA)** has notified new rules for administration in the Union Territory of Jammu and Kashmir that specify the functions of the Lieutenant Governor (LG) and the Council of Ministers.

Roles and powers of LG:

- **Police, public order, All India Services and anti-corruption, will fall under the executive functions of the LG,** implying that **the Chief Minister or the Council of Ministers will have no say in their functioning.**
- **Proposals or matters which affect or are likely to affect the peace and tranquility** of the UT or the interest of any minority community, the Scheduled Castes, the Scheduled Tribes and the Backward Classes "shall essentially **be submitted to the Lieutenant Governor through the Chief Secretary,** under intimation to the Chief Minister, before issuing any orders."
- **In case of difference of opinion between the LG and a Minister** when no agreement could be reached even after a month, **the "decision of the Lieutenant Governor shall be deemed to have been accepted by the Council of Ministers.**

Role of the President:

- In case of difference of opinion between the Lieutenant Governor and the Council with regard to any matter, the Lieutenant Governor shall refer it to the Central Government for the decision of the President and shall act according to the decision of the President.
- The LG of J&K has been empowered to pass directions in such situations that action taken by the Council of Ministers will be suspended for as long as it takes **the President of India to decide on the cases referred to her.**

Role of Council of Ministers, led by the Chief Minister:

- They will decide service matters of non-All India Services officers, proposal to impose new tax, land revenue, sale grant or lease of government property, reconstituting departments or offices and draft legislations.

- **Any matter which is likely to bring the Government of the Union territory into controversy with the Central Government or with any State Government**, shall, as soon as possible, be brought to the notice of the LG and the Chief Minister by the secretary concerned through the Chief Secretary.

Role of the Central Government:

The Lieutenant Governor shall make a prior reference to the Central government with respect to proposals of the following kinds:

- those affecting the relations of the Centre with any state government, the Supreme Court of India or any other high court;
- proposals for the appointment of Chief Secretary and Director General of Police;
- important cases which affect or are likely to affect the peace and tranquillity of the Union Territory; and
- Cases which affect or are likely to affect the interests of any minority community, Scheduled Castes or the Backward Classes.

Implications of the new rules:

- In the erstwhile state of Jammu and Kashmir, when it had special status, the chief minister was the most powerful person in the decision-making process.
- With the new rules, CM has been reduced to an ornamental figure. He would not even have the power to transfer a constable of the Jammu & Kashmir Police.

Development by abrogating Article 370

- It would head towards ending separatism, nepotism and corruption and would provide welfare to the people of Jammu and Kashmir.
- SC, ST and individuals from other backward communities in other regions would enjoy special benefits as the central laws for welfare of these communities.
- The financial benefits for central government employees, including security forces, like LTC, HRA and more will be provide to those posted in Jammu and Kashmir.
- The vacant posts in Jammu and Kashmir will be filled. This will benefit the youth of Jammu and Kashmir. Local youth will receive employment.
- State companies as well as private companies will be encouraged to create jobs for the local youths in the state.
- J&K and Ladakh have the potential to become the biggest tourist destination in the world.
- Film industry would come to J&K for shooting their projects. Sport training, scientific education will help the youth of J&K to showcase their talent across the world.
- Several herbal and organic products are scattered across J&K and Ladakh. If they are identified and marketed in the global market, then it will greatly benefit the people and farmers of these regions.

Challenges after abrogation of Article 370

- It may swell the ranks of separatists.
- It may feed the rage and increase the distance between Srinagar and New Delhi.
- It may even push mainstream politicians to promote extremists views.
- It could lead to more bloodshed and encourage Pakistan to fish in muddied waters.
- Elements keen to destabilise India would seek to build a narrative that Delhi is taking away powers from the local level.
- It is important that the process of turning the state into a UT does not lead to alienation.

Impact on LoC status

- As with any bilateral treaty, the status or definition of the LoC can be legally altered only with the agreement of both India and Pakistan.
- The constitutional changes to Article 370 do not automatically make an impact on the status of the LoC.

- On a question over the impact of this constitutional change on the Pakistani side territory, the Indian home minister reiterated India's claim to the whole of Kashmir.
- However, a diplomatic response from the Ministry of External Affairs clarified that the changes do not affect either the LoC or the Line of Actual Control (the disputed border with China running through Ladakh).
- Given these, many see the LoC as merely continuing with an indefinite and harmful status quo, thus preventing a substantive resolution of the conflict.

Special Provision for Delhi

The 69th Constitutional Amendment Act of 19915 provided a special status to the Union Territory of Delhi, and redesignated it the National Capital Territory of Delhi and designated the administrator of Delhi as the lieutenant (lt.) governor. It created a legislative assembly and a council of ministers for Delhi. Previously, Delhi had a metropolitan council and an executive council.

The strength of the assembly is fixed at 70 members, directly elected by the people. The elections are conducted by the election commission of India. The assembly can make laws on all the matters of the State List and the Concurrent List except the three matters of the State List, that is, public order, police and land. But, the laws of Parliament prevail over those made by the Assembly.

The strength of the council of ministers is fixed at ten per cent of the total strength of the assembly, that is, seven–one chief minister and six other ministers. The chief minister is appointed by the President (not by the lt. governor). The other ministers are appointed by the president on the advice of the chief minister. The ministers hold office during the pleasure of the president. The council of ministers is collectively responsible to the assembly.

The council of ministers headed by the chief minister aid and advise the lt. governor in the exercise of his functions except in so far as he is required to act in his discretion. In the case of difference of opinion between the lt. governor and his ministers, the lt. governor is to refer the matter to the president for decision and act accordingly.

When a situation arises in which the administration of the territory cannot be carried on in accordance with the above provisions, the president can suspend their (above provisions) operation and make the necessary incidental or consequential provisions for administering the territory. In brief, in case of failure of constitutional machinery, the president can impose his rule in the territory. This can be done on the report of the lt. governor or otherwise. This provision resembles Article 356 which deals with the imposition of President's Rule in the states.

The lt. governor is empowered to promulgate ordinances during recess of the assembly. An ordinance has the same force as an act of the assembly. Every such ordinance must be approved by the assembly within six weeks from its reassembly. He can also withdraw an ordinance at any time. But, he cannot promulgate an ordinance when the assembly is dissolved or suspended. Further, no such ordinance can be promulgated or withdrawn without the prior permission of the President.

Government of NCT of Delhi v. Union of India

In 2018, the Delhi government has appointed the public prosecutors for conducting the Delhi riot cases in the High Court. However, the Lieutenant Governor (LG) has stalled this decision, by referring it to the President under proviso to Article 239AA(4).

Delhi Government has held that the appointment of prosecutors to the Supreme Court and High Court is exclusively within the purview of the State government. On the other hand, LG appointed all the prosecutors whose names were submitted by the Delhi Police (under the control of Ministry of Home Affairs) and thus the State government's list was rejected.

This development has reignited the LG vs. Delhi Government's jurisdiction debate that the Supreme Court sought to address in **NCT of Delhi vs. Union of India (2018).**

Legal Controversy between LG & Delhi Government

- Due to the co-existence of Article 239 and 239AA, there is a jurisdictional conflict between the government of NCT and the Union Government and its representative, the Lieutenant Governor.
- According to the Union government, New Delhi being a Union Territory Article 239 empowers the Lieutenant Governor to act independently of his Council of Ministers.

- However, the state government of Delhi held that the Article 239AA of the Constitution bestows special status to Delhi of having its own legislatively elected government.
- This creates a tussle around the administrative powers of the LG and state government of NCT of Delhi.

Highlights of the 2018 Judgement

- **Status of Delhi under the Constitution**
  - Administration of Union Territory under Article 239(1) is different from Article 239AA which provides for an elected Legislature.
  - The court held that Parliament can legislate for Delhi on any matter in the State List and the Concurrent List but the executive power in relation to Delhi except the 'Police', 'Land' and 'Public Orders' vests only in the state government headed by the Chief Minister.
  - It also held that the executive power of the Union does not extend to any of the matters which come within the jurisdiction of the Delhi Assembly.
- **LG to act on 'aid and advice' of the Council of Ministers**
  - The court held that for establishing a democratic and representative form of government for NCT of Delhi, Government of Delhi that enjoys the confidence of the people of Delhi should have the functional autonomy to legislate for the NCT of Delhi.
  - Hence, through the judgement, the Supreme Court has settled the law in regard to the 'aid and advice' of the Council of Ministers by affirming that the LG is bound to act on the aid and advice except in respect of 'Land', 'Public Order' and the 'Police'.
- **LG cannot refer 'every' matter to the President**
  - Article 239AA (4) says that in the case of a difference of opinion between the LG and his Ministers on **any matter,** the LG shall refer it to the President for final decision and act according to it.
  - However, the court inferred that the words 'any matter' employed in the proviso to Article 239AA (4) cannot be inferred to mean 'every matter'.
  - The power of the Lieutenant Governor under the said proviso represents the exception and not the general rule which has to be exercised in exceptional circumstances by the LG.
- **Limited References to be made to the President**
  - LG does not to refer to the President normal administrative matters as that would disturb the concept of Constitutional governance, principles of collaborative federalism and the standards of Constitutional morality.
  - The Court also held that the President is the highest Constitutional authority and his decision should be sought only on constitutionally important issues.
- **Unresolved Areas in the Judgement**
  - **Overlapping Areas:** Though the court has settled that LG is bound to act on the aid and advice except in respect of 'Land', 'Public Order' and the 'Police'. However, Public Order is a very wide connotation, which subsequently leads to overlapping executive powers.
  - **Still No Clarity on Article 239AA (4):** The court did not very clearly delineate the issues in respect of which the LG can refer a decision taken by the Council of Ministers to the President in the event of a difference of opinion between the LG and the State government.
  - **Open-Ended Terminologies:** In the event of referring any matter to the President, the Court enunciated that LG must adhere to the constitutional principles of **collaborative federalism, constitutional balance and the concept of constitutional governance.**
  - However, these terms are very wide and open-ended and subject to different interpretations.

Way Forward

- **Harmonious Functioning:** Constitutional scheme adopted for the NCT of Delhi conceives of the Council of Ministers as the representatives of the people on the one hand and the LG as the nominee of the President on the other.
  - For the sake of adhering to the principle of representative democracy and cooperative federalism, it is required that both the constitutional offices should function in harmony within the Constitutional parameters.

- **Incorporating the Washington DC Model:** Indian Government can emulate the model of administrative sharing of power between the Federal Government of US and state of Washington.
  - Under that scheme, only the strategic areas and buildings are under the effective control of the federal government and the rest of the areas are under jurisdiction of Washington State.
  - Given this, the institution of strategic importance like Parliament, Supreme Court etc. can remain under the jurisdiction of Union Government and areas other than these can be given statehood.

Conclusion

The Supreme Court in NCT of Delhi vs. Union of India (2018) case did well in resolving the legal controversy between the LG and Delhi Government. However, the present controversy shows there are still many areas to be resolved. Thus, the Supreme Court must leverage the present controversy to resolve this jurisdictional conflict for good.

Government of NCT of Delhi (Amendment) Act, 2021

- **Provisions of the Act:**
  - "Government" to mean "Lieutenant Governor (LG)": The expression 'Government' referred to in any law to be made by the Legislative Assembly shall mean the Lieutenant Governor (LG).
  - Widening of Discretionary Powers of LG: The Bill gives discretionary powers to the LG even in matters where the Legislative Assembly of Delhi is empowered to make laws.
  - Necessarily Granted an Opportunity to LG: It seeks to ensure that the LG is "necessarily granted an opportunity" to give her/his opinion before any decision taken by the Council of Ministers (or the Delhi Cabinet) is implemented.
  - Related to Administrative Decisions: The amendment also says that "Legislative Assembly shall not make any rule to enable itself to consider the matters of day-to-day administration of the Capital or conduct inquiries in relation to the administrative decisions".
- **Need of the Amendment:**
  - **For Structural Clarity:** The Ministry of Home Affairs' statement on "objects and reasons" of the Bill stated that Section 44 of the 1991 Act deals with conduct of business and there is no structural mechanism for effective time-bound implementation of the said section.
  - Also, there is no clarity as to what proposal or matters are required to be submitted to Lieutenant Governor before issuing order thereon.
  - Section 44 of the 1991 Act says that all executive actions of the LG, whether taken on the advice of his Ministers or otherwise shall be expressed to be taken in the name of the LG.

Government of National Capital Territory of Delhi Act, 1991

- Delhi's current status as a Union Territory with a Legislative Assembly is an outcome of the 69th Amendment Act through which Articles 239AA and 239BB were introduced in the Constitution.
- The Government of National Capital Territory of Delhi (GNCTD) Act was passed simultaneously to supplement the constitutional provisions relating to the Assembly and the Council of Ministers in the national capital.
- For all practical purposes, the GNCTD Act outlines the powers of the Assembly, the discretionary powers enjoyed by the LG, and the duties of the Chief Minister with respect to the need to furnish information to the LG.

Balakrishnan Committee Report on Delhi Government:

- The report said that Delhi as the national capital belonged to the nation as a whole.
- Delhi could not have a situation of having two Governments run by different political parties.
- Such conflicts may, at times, prejudice the national interest.

- The report said the control of the Union over Delhi was vital in the national interest.
- It said the 'aid and advice' concept cannot apply to any judicial or quasi judicial functions.
- It would apply only in matters where the Legislative Assembly has the powers to make laws.
- The L-G has a more active part in the administration than the Governor of any State.
- However, differences of opinion would be decided by the President.

Administrative System of Union Territories at a Glance

No.	Union Territories	Executive	Legislature	Judiciary
1.	Andaman and Nicobar Islands	Lt. Governor		Under Calcutta High Court
2.	Chandigarh	Administrator		Under Punjab and Haryana High Court
3.	Dadra and Nagar Haveli	Administrator		Under Bombay High Court
4.	Daman and Diu	Administrator		Under Bombay High Court
5.	Delhi	(a) Lt. Legislative Governor Assembly (b) Chief minister (c) Council of Ministers	Legislative Assembly	Separate High Court
6.	Lakshadweep	Administrator		Under Kerala High Court
7.	Puducherry	(a) Lt. Governor (b) Chief minister (c) Council of ministers	Legislative Assembly	Under Madras High Court
8.	Jummu & Kashmir	(a) Lt. Governor (b) Chief minister (c) Council of ministers	Legislative Assembly	Under Jammu & Kashmir High Court
9.	Ladakh	Lt. Governor		Under Jammu & Kashmir High Court

Articles Related to Union Territories at a Glance

Article No.	Subject-Matter
239.	Administration of Union territories
239A.	Creation of local Legislatures or Council of Ministers or both for certain Union territories
239AA.	Special provisions with respect to Delhi

239AB.	Provision in case of failure of constitutional
239B.	Power of administrator to promulgate Ordinances during recess of Legislature
240.	Power of President to make regulations for certain Union territories
241.	High Courts for Union territories
242.	Coorg (Repealed)

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