



Study Notes State Government



Study Notes on State Government for CLAT 2020 & Other Law Entrance Exams

The Governor

1. The Governor is the **De Jure executive** head at the state level. His position is analogous to that of the President at the centre.
2. The president appoints the Governor.
3. To be appointed as the Governor of any state or two or more states as a person
 - (a) Should be a citizen of India.
 - (b) And should have attained **35 years** of age.
4. He should not hold any office of profit as well.
5. Like the President, the governor is also entitled to several immunities and privileges. During his term of office, he is immune from any criminal proceedings, even in respect of his acts.
6. **The oath** - is administered by the chief justice of the corresponding state high court and in case he's absent, the senior-most judge of that particular court.
7. A governor holds office for a term of **five years** from the date on which he enters upon his office. He holds office until the pleasure of the President, and he offers his resignation to the President.
8. All executive actions of the government of a state are formally taken in his name. He appoints the chief minister and other ministers. They also hold office during his pleasure.
9. He appoints the **advocate general** of a state and determines his remuneration. The advocate general holds office during the pleasure of the governor.
10. He appoints the **state election commissioner**. However, the state election commissioner can be removed only in the like manner and on similar grounds as a judge of a high court.
11. He appoints the chairman and members of the state public service commission. However, they can be removed only by the president and not by a governor.
12. A governor is an integral part of the state legislature. He can summon or prorogue the state legislature and dissolve the state legislative assembly.
13. He nominates one-sixth of the members of the state legislative council.
14. He can nominate one member to the state legislative assembly from the Anglo-Indian Community.
15. The Governor can withhold the consent to bills, return the bills for reconsideration (if they're not money bills), and even reserve the bills for consideration by the President. (He can also reserve a money bill for consideration by the President).
16. He can promulgate ordinances when the state legislature is not in session. The state legislature must approve the ordinances within six weeks from its reassembly. He can also withdraw an ordinance anytime (**Article 213**).
17. Money bills can be introduced in the state legislature only with his prior recommendation.
18. He can grant pardons, reprieves, respites, and remissions of punishment or suspend, remit and commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the state extends (**Article 161**).
19. He is consulted by the president while appointing the judges of the concerned state high court.

Important Articles about the office of Governor

- 153 - Governors of states
- 154 - Executive power of the state
- 155 - Appointment of Governor
- 156 - Term of office of Governor
- 157 - Qualifications for the appointment as the Governor
- 158 - Conditions of the Governor's office
- 159 - Governor's Oath or Affirmation
- 161 - Power of the Governor to grant pardons and others
- 163 - Aid and Advice by the Council of Ministers to the Governor
- 165 - Advocate-General for the state
- 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 - Governor's power to promulgate ordinances
- 217 - Consultation of Governor by the President in the matter of the appointments of the judges of the High Courts

Chief Minister and State Council of Ministers

1. Chief Minister is the real executive authority (*de facto executive*). He is the head of the government.
2. The total strength of the number of ministers, including the C.M, in the state's CoM, should not exceed **15%** of the overall strength of the legislative assembly of that state. However, the number of ministers, including the C.M, in a state should also not be less than 12. The 91st Amendment Act of 2003 added this provision.
3. A member of either House of state legislature belonging to any political party who is disqualified on the ground of defection shall also be disqualified to be appointed as a minister. The 91st Amendment Act of 2003 also added the provision.

The State Legislature

The organisation of the State Legislature

1. Most of the states in India have a Unicameral Legislature. Seven States have Bicameral Legislature, that is- **Telangana, Andhra Pradesh, Maharashtra, Bihar, U.P and Karnataka.**
2. The Legislative Council (Vidhan Parishad) is the upper house (second chamber or house of elders), while the Legislative Assembly (Vidhan Sabha) is the lower house (first chamber or popular house). Delhi and Puducherry are the only two UTs that have a Legislative Assembly.

About unicameral legislature & bicameral legislature

- A state **legislature** that has one house, known as State **Legislative Assembly** (Vidhan Sabha), is a **unicameral legislature**.
- A state **legislature** that has two houses known as State **Legislative Assembly** and State **Legislative Council** (Vidhan Parishad), is a bicameral **legislature**.

Note:

- In the Bicameral system, **Legislative Council (Vidhan Parishad) is the upper house** while **Legislative assembly (Vidhan Sabha) is the lower house**.
- State Legislature consists of Governor of the state and one or two houses depending on Unicameral or Bicameral system.

Composition of the State Legislature

1. The legislative assembly consists of representatives directly elected by the people based on universal adult franchise. Its maximum strength is fixed at **500 and minimum strength at 60** depending on the population size of the state. However, in the case of **Sikkim, it is 32**; and **Goa and Mizoram it's 40**.
2. The members of the **legislative council** are indirectly elected. **The maximum strength** of the legislative council is fixed at **1/3rd** of the total strength of the corresponding assembly and the minimum strength is set at 40.
3. **Manner of Election** Of the total number of members of a legislative council:
 - (a) 1/3 are elected by the members of local bodies in the state such as municipalities etc.,
 - (b) 1/12 are elected by graduates of three years standing and residing within the state,
 - (c) 1/12 are elected by teachers of three years standing in the state, not lower in standard than secondary school,
 - (d) 1/3 are elected by the members of the legislative assembly of the state from amongst persons who are not members of the assembly, and
 - (e) The remainder is nominated by the governor from amongst the persons who have specialised knowledge or practical experience of literature, science, art, cooperative movement, and social service.

Thus, 5/6 of the total number of members of a legislative council is indirectly elected, and the governor nominates 1/6. The members are elected per the system of proportional representation through a single transferable vote.

Duration of the two Houses

1. Analogous to the Lok Sabha, the legislative assembly is also not a permanent chamber. The term of the assembly is five years from the date of its first meeting after the general elections.
2. Analogous to the Rajya Sabha, the legislative council is a continuing chamber, that is, it is a permanent body and is not subject to dissolution. But, one-third of its members retire on the expiration of every second year.

Membership of the State Legislature

1. The Constitution lays down the following qualifications for a person to be chosen as a member of the State legislature.
 - (a) Citizen of India.
 - (b) He must be not less than 30 years of age in the case of the legislative council and not less than 25 years of age in the case of the legislative assembly.
2. He should not have been found guilty as per the provisions of RPA, 1951. In defection case also a member is liable to be disqualified as per the Anti-Defection Act (10th Schedule).
3. Also, he should not be of unsound mind, and he should not hold any office of profit; he isn't declared an undischarged insolvents etc.

Presiding Officers of State Legislature

1. Each House of the state legislature has its presiding officer. There are a Speaker and a Deputy Speaker for the legislative assembly and Chairman and a Deputy Chairman for the legislative council. A panel of chairmen for the assembly and a panel of vice-chairmen for the council are also appointed.
2. The assembly itself elects the Speaker from amongst its members.
3. 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.
4. The council itself elects the Chairman from amongst its members.
5. The Speaker decides whether a bill is a Money Bill or not, and his decision on this question is final.

Important points related to the State Legislature

1. **Maximum gap between the two sessions**

- The maximum gap between the two sessions of the state legislature cannot be more than six months, that is, the state legislature should meet at least twice a year.

2. **Quorum**

- **Quorum is the minimum number of members required to be present in the House before it can transact any business.**
- Either its ten or 1/10th of the total number of members in that particular House (including the presiding officer).

3. **Every member and the advocate general of the state have the right to speak**

- In addition to the members of a House, every minister and the advocate general of the state have the right to speak and take part in the proceedings of either House or any of its committees of which he is named a member, but Advocate General can't vote.

4. **Money Bill**

- A Money Bill **cannot be introduced in the legislative council.**
- It can be introduced in the legislative assembly only and that too on the recommendation of the governor.
- Every such bill is considered to be a government bill and can be introduced only by a minister.

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