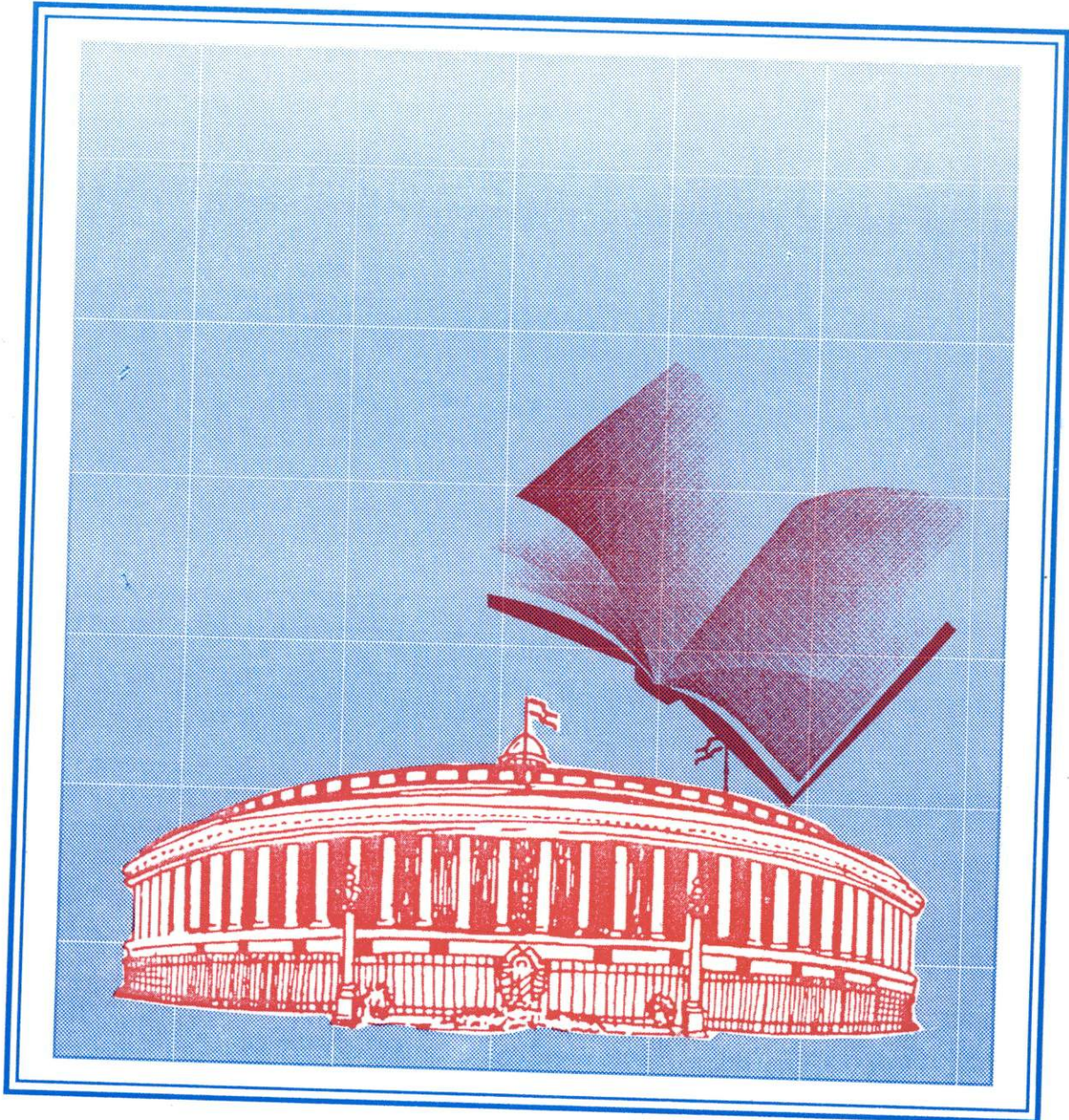




**POLITICAL SCIENCE
MA [PREVIOUS]
Course III**

1985



KARNATAKA STATE OPEN UNIVERSITY
Manasagangothri, Mysore - 570 006

Block - 5

ಉನ್ನತ ಶಿಕ್ಷಣಕ್ಕಾಗಿ ಇರುವ ಅವಕಾಶಗಳನ್ನು ಹೆಚ್ಚಿಸುವುದಕ್ಕೆ ಮತ್ತು ಶಿಕ್ಷಣವನ್ನು ಪ್ರಜಾತಂತ್ರೀಕರಿಸುವುದಕ್ಕೆ ಮುಕ್ತ ವಿಶ್ವವಿದ್ಯಾನಿಲಯ ವ್ಯವಸ್ಥೆಯನ್ನು ಆರಂಭಿಸಲಾಗಿದೆ.

ರಾಷ್ಟ್ರೀಯ ಶಿಕ್ಷಣ ನೀತಿ 1986

The Open University system has been initiated in order to augment opportunities for higher education and as instrument of democratizing education.

National Education Policy 1986

ಮುಕ್ತ ವಿಶ್ವವಿದ್ಯಾನಿಲಯವು ದೂರಶಿಕ್ಷಣ ಪದ್ಧತಿಯಲ್ಲಿ ಬಹುಮಾಧ್ಯಮಗಳನ್ನು ಉಪಯೋಗಿಸುತ್ತದೆ.ವಿದ್ಯಾಕಾಂಕ್ಷಿಗಳನ್ನು ಜ್ಞಾನ ಸಂಪಾದನೆಗಾಗಿ ಕಲಿಕಾ ಕೇಂದ್ರಕ್ಕೆ ಕೊಂಡೊಯ್ಯುವ ಬದಲು, ಜ್ಞಾನ ಸಂಪತ್ತನ್ನು ವಿದ್ಯೆ ಕಲಿಯುವವರ ಬಳಿ ಕೊಂಡೊಯ್ಯುವ ವಾಹಕವಾಗಿದೆ.

ಡಾ. ಕುಳಂದೈಸ್ವಾಮಿ

"The Open University system makes use of Multimedia in distance education system. it is vehicle which transports knowledge to the place of learners rather than transport to the place of learning.

Dr. Kulandai Swamy

ವಿಶ್ವಮಾನವ ಸಂದೇಶ

ಪ್ರತಿಯೊಂದು ಮಗುವು ಹುಟ್ಟುತ್ತಲೇ - ವಿಶ್ವಮಾನವ. ಬೆಳೆಯುತ್ತಾ ನಾವು ಅದನ್ನು 'ಅಲ್ಪ ಮಾನವ'ನನ್ನಾಗಿ ಮಾಡುತ್ತೇವೆ. ಮತ್ತೆ ಅದನ್ನು 'ವಿಶ್ವಮಾನವ'ನನ್ನಾಗಿ ಮಾಡುವುದೇ ವಿದ್ಯೆಯ ಕರ್ತವ್ಯವಾಗಬೇಕು.

ಮನುಜ ಮತ, ವಿಶ್ವ ಪಥ, ಸರ್ವೋದಯ, ಸಮನ್ವಯ, ಪೂರ್ಣದೃಷ್ಟಿ ಈ ಪಂಚಮಂತ್ರ ಇನ್ನು ಮುಂದಿನ ದೃಷ್ಟಿಯಾಗಬೇಕಾಗಿದೆ. ಅಂದರೆ, ನಮಗೆ ಇನ್ನು ಬೇಕಾದುದು ಆ ಮತ ಈ ಮತ ಅಲ್ಲ; ಮನುಜ ಮತ. ಆ ಪಥ ಈ ಪಥ ಅಲ್ಲ; ವಿಶ್ವ ಪಥ. ಆ ಒಬ್ಬರ ಉದಯ ಮಾತ್ರವಲ್ಲ; ಸರ್ವರ ಸರ್ವಸ್ವರದ ಉದಯ. ಪರಸ್ಪರ ವಿಮುಖವಾಗಿ ಸಿಡಿದು ಹೋಗುವುದಲ್ಲ; ಸಮನ್ವಯಗೊಳ್ಳುವುದು. ಸಂಕುಚಿತ ಮತದ ಅಂಶಿಕ ದೃಷ್ಟಿ ಅಲ್ಲ; ಭೌತಿಕ ಪಾರಮಾರ್ಥಿಕ ಎಂಬ ಭಿನ್ನದೃಷ್ಟಿ ಅಲ್ಲ; ಎಲ್ಲವನ್ನೂ ಭಗವದ್ ದೃಷ್ಟಿಯಿಂದ ಕಾಣುವ ಪೂರ್ಣದೃಷ್ಟಿ.

ಕುವೆಂಪು

Gospel of Universal Man

Every Child, at birth, is the universal man. But, as it grows, we turn it into "a petty man". It should be the function of education to turn it again into the enlightened "universal man".

The Religion of Humanity, the Universal Path, the Welfare of All, Reconciliation, the Integral Vision- these *five mantras* should become View of the Future. In other words, what we want henceforth is not this religion or that religion, but the Religion of Humanity ; not this path or that path, but the Universal Path ; not the well-being of this individual or that individual, but the Welfare of All ; not turning away and breaking off from one another, but reconciling and uniting in concord and harmony ; and, above all, not the partial view of a narrow creed, not the dual outlook of the material and the spiritual, but the Integral Vision of seeing all things with the eye of the Divine.

Kuvempu



**Karnataka State
Open University**

**Political Science
Course 3**

Block

5

Introduction

Unit 15

**The Governor-Constitutional Position and Powers, 01 to 12
His Role in Recent Times**

Unit 16

The Chief Minister and Council of Minister 13 to 19

Unit 17

State Legislature-Composition and Powers 20 to 26

Unit 18

High Court-Composition and Jurisdiction 27 to 33

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Block – V

Introduction

Block V has 4 units. Unit 15 deals with the office of the Governor who is the Head of the State in the Indian Federal System. It deals with the appointment, powers functions and constitutional position of the Governor. Unit 16 explains composition, powers of the Council of Ministry and the role of the Chief Minister in a state. Unit 17 describes the State Legislature, its composition and powers. Unit 18 deals with the High Court, which is the highest court, at the state level. High courts composition and jurisdiction is explained in this unit.

**UNIT 15 THE GOVERNOR-CONSTITUTIONAL POSITION AND POWERS, HIS
ROLE IN RECENT TIMES**

Structure

- 15.0 Objectives
- 15.1 Introduction
- 15.2 Appointment
- 15.3 Powers of the Governors
 - 15.3.1 Executive powers
 - 15.3.2 Legislative powers
 - 15.3.3 Judicial powers
 - 15.3.4 Emergency powers
- 15.4 Governor's role-constitutional position
- 15.5 Let us Sum up
- 15.6 Key words
- 15.7 Books for Study
- 15.8 Answers to check your progress exercises

15.0 OBJECTIVES

After studying this unit you will be able to understand

- The method of appointment of the Governor
- Powers of the Governor
- Governor's role in state administration

15.1 INTRODUCTION

Indian Constitution provides for a federal government. As such, for the government of federal units i.e. States it lays down a uniform structure in part VI of the Constitution except Jammu and Kashmir.

Though the draft Constitution of India provided for an elected Governor during the debate in the Constitution Assembly (1) to save the country from the evils of election which run on personal issues and (2) the possibility of entertaining the perverted idea that the elected person is superior to the Chief Minister which will lead to frequent friction between the Chief Minister and the Governor, the Constitution provided for an appointed Governor. Other reasons being (3) heavy expenditure involved in the election of counterpart. (4) Party politics may not field a stronger candidate compared to the Chief Minister and in that case he would act as a nominee to the Chief Minister. (5) Method of election leads to separatist tendencies as the person belongs to a particular State can only stand for election. (6) Through the procedure of appointment by the President the Union government would be able to maintain its control over the States. Arguments advanced against nomination are (1) a nominated Governor would not be able to work for the welfare of a State because he would be a foreigner to the State and either would not be able to understand its special needs or become indifferent towards integrated development of the state. (2) There is a chance of friction between the Governor and the Chief Minister, if the latter did not belong to the same party as the nominated Governor, (3) An appointed Governor under the instructions of the Centre might like to run the administration in such a way that may be contrary to the wishes of the Cabinet of the State. In this tussle, the Cabinet will win and hence comparatively the system of election was more compatible with good, better and efficient government plus the right of self government. (4) The method of appointment of the head of the State Executive by the federal executive is repugnant to the federal system.

15.2 APPOINTMENT

There is a Governor for each State. The Constitution provides that the same person may be appointed as the Governor for two or more States. President on the advice of the Prime Minister appoints the Governor. The State Government cannot effectively influence this process. However, informal

consultation may take place with the Chief Minister on the acceptability of a person to the state. Problems won't arise if both the Union and State governments are governed by the same political party as there will be no difference regarding the interests of both the governments. By chance, if there are conflicts they can be easily sorted out by the party machinery. But if there is a change in the party rule in the State problems may arise. A person acceptable to the outgoing Chief Minister may not be persona grata with the incoming Chief Minister. For example; Nityanand Kanungo in Bihar was boycotted by the Cabinet. The case of Dharma vira point out that the Governor may become persona non-grata at a later stage - and the pressure exercised by the State Government for his removal was tremendous.

A Governor *is* appointed for a term of five years, and he remains in office during the pleasure of the President. Here, there is no provision by which the State government may get the removal of an undesirable Governor. It may pass resolutions and petition to the President. In an extreme situation the ruling party government and other agencies may create conditions where the normal constitutional government may not work and political situation may deteriorate to the extent of forcing the Governor to resign and the President to accept his resignation. However, the State Governments may become helpless against an adamant Governor enjoying support and confidence of the Prime Minister and the pleasure of the President. In this context the cases of Nityanand Kanungo in Bihar and of Dharma Vira in West Bengal are illustrative. Moreover, the procedure of appointment and removal of a Governor in a State is not strictly in accordance with title federal principle which respects the autonomy of the unit i.e. State. Dismissal of Patwari, Governor of Tamil Nadu in 1981 is an example how an unwanted person is unceremoniously removed from the position.

Check your progress – 1

1. How the Governor of a state is appointed?

15.3 POWERS OF THE GOVERNOR

Unlike the President, Governor has no .diplomatic or military powers. However, he possesses executive, legislative judicial powers and emergency powers.

15.3.1 Executive powers:

He appoints the council of ministers, the Advocate General and the Members of the State Public Service Commission. The Ministers as well as Advocate General hold office during the pleasure of the Governor. But the Members of the Public Service Commission cannot be removed by him as they can be removed only by the President on the report of the Supreme Court and, in some cases, on the happening of certain disqualifications (Art. 317).

Similarly, the Governor has no power to appoint the judges of the State High court but he is entitled to be consulted by the President in the matter. (Art. 217 (1))

Like the President, the Governor has the power to nominate one member of the Anglo-Indian Community to the Legislative Assembly of his State, if he is satisfied that they are not adequately represented in the Assembly. (Art. 333, 22nd Amendment Act, 1969).

But in the case of upper house, like the President, the Governor has the power to nominate persons having special knowledge or practical experience in respect of matters such as literature, science, arts, co-operative movement and social service (Art. 171 (5)) It is to be noted that co-operative movement is not included in the corresponding list relating to the Council of States.

15.3.2 Legislative Powers

Governor being a part of the State Legislature (Art. 164) he has the right of addressing and sending messages, and of summoning, proroguing and dissolving the State legislature. Just as the President in relation to Parliament, he also possesses a similar power of causing to be laid before the State legislature, the annual financial statement (Art.-202) and or making demands for grants and recommending 'Money Bills' (Art. 207). He has limited power of Veto also. He can issue ordinances.

15.3.3 Judicial Powers

The Governor has the power to grant pardons, reprieves, respites, or remission of punishments or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends (Art. 161).

15.3.4 Emergency Powers

The Governor has no emergency powers to meet the situation arising from external or internal aggression as the President has, but he can send a report to the President. whenever he is satisfied that a situation has arisen in which government of the State cannot be carried on in accordance with the provisions' of the Constitution (Art. 356) thereby inviting the President to assume to himself the functions of the Government of the State or any of them (President's Rule).

Check your progress – 2

1. Explain the powers of the Governor ?

15.4 GOVERNOR'S ROLE : CONSTITUTIONAL POSITION

The office of the Governor, occupies an important place in the Indian Constitutional structure. He is expected to head a state and also act as a representative of the President and the Union Government during emergencies. In this latter position he is responsible to carry out the directives of the Union Government. Unfortunately, both the roles noted above are not clearly defined. Obviously, they create difficulties in the functioning of the Governor. The Constitution has made several provisions which gave wide opportunities to the Union to interfere with the government of State through the Governor. As a result number of controversies arose between the Union and the States. The provisions which strained the Union-State relations mainly relate to the appointment and removal of a Governor, power to appoint a Chief Minister, dismissal of a government, dissolution of the Legislative Assembly, and report to the President under Article 356. In addition to this, referring issues to the Union for advice, and fear of displeasure of the Prime Minister also cause apprehensions in the mind of the Governor. A Governor may afford to ignore a State Government, but would hesitate to incur displeasure of the Union government. Let us examine the role of the Governor at least in a limited way by examining the provisions as operationalised.

Principles and conventions of Parliamentary government require that claims of majority and ability to command stability should be left to the Legislative Assembly to decide. The Governor will not only relieve of an onerous duty, but will also be saved from public criticism and allegation of partiality. The Governor should choose one person whom he reasonably thinks fit and ask him to test his strength on the floor of the House. If he wins, he be allowed to continue in office and if not be replaced by another, the leader of the opposition. It has been applied in Haryana in 1982 but the manner was questionable. The Governor hastened to appoint Bhajalal without giving a chance for Devlal (opposition leader) to prove his majority whom he had asked to do so. If a convention is adopted by which the leader of the coalition like the leader of any political party is chosen at a meeting of all the members it will be rendered easier. The Governor Shrimannarayan used to get written reports from the Speaker of the Assembly and was guided by him about the latest composition of various parties in the House; This is a matter which should safely be left to the speakers who are supposed to be impartial and above all parties. Gurumukh Nihal Singh is of the view that the leader invited must be willing to advise the Governor to summon a meeting of the Assembly with the least possible delay. Alternatively form an alliance, seek election and get a clear majority, the Governor feels duty bound to appoint the leader of the alliance to form the government, as in Kerala in 1971 and 1982. But with respect to post-electoral alliance he has options open to him. a) to invite the leader of the largest group to form the government, b) to invite the leader of a minority party c) To choose a leader from among various claimants to dissolve the Assembly, and e) to recommend President's rule under Art. 356. None of the above three has an exclusive right. No uniform principle can be deduced after examining the various cases, particularly after 1967. Sometimes the leader of the largest party in the Assembly has been allowed. to form Government as in 1952 in

Madras, but at some other times, he is denied the claim as in Orissa in 1973 and in West Bengal after mid term elections, in 1971. From these, one can infer that the Governors have been guided by their anxiety for stability and of legislative support to the government. This is reflected in the Report of the Committee of Governors (1971) and the Orissa Governor's report to the President sent on March 2, 1973. But what satisfies him is difficult to analyze. For this purpose nothing prevents a Governor from consulting the leaders of the different parties and groups and also individuals inside the House and outside it.

a) Pleasure of the Governor

Under the Constitution of India, the Council of Ministers in a State has two masters - the Governor and the Legislative Assembly. To hold office, it must continue to enjoy the pleasure of the former and confidence of the latter. Failing either of the two, it must quit the office. Technically, the Ministers hold office - during the pleasure of the Governor. Like power to appoint, his power to withdraw pleasure is also absolute and unrestricted. The provisions for collective responsibility, and confidence of the Legislative Assembly do not restrict his power to withdraw pleasure. The Constitution has not conferred any power on the Legislative Assembly of the State to dismiss or remove from office the Council of Ministers. Powers of appointment and removal have been conferred on the Governor of State exclusively. So if the Council refuses to relinquish office on a vote of confidence the Governor can remove it by withdrawing his pleasure. So it is due to political ethics or political compulsion that the Council of Ministers must resign on an expression of want of Confidence. And it is only consistent with parliamentary convention' that a Governor must signify his displeasure when the Assembly has expressed its lack of confidence.

b) Loss of Confidence of the Assembly

Like power to appoint and to dismiss, the term responsibility to the Assembly is vague and loss of confidence elastic. Loss of confidence is signified by passing of a no-confidence motion, token cut in the grants, rejecting a money bill, or an important legislation initiated by the Government. The no-confidence motion is direct and presents no difficulty, but it is very difficult to interpret others. In December 1973, the Bihar government refused to treat as no-confidence a defeat as the Sales tax bill on the ground that the Assembly had a few days before, defeated a no confidence motion. A few days later it again escaped a defeat by marginal votes. The Governors too treat such defeats liberally as they think that every single defeat not accessorially demands the resignation of the Ministry. But which defeat demands resignation is yet to be specified by conventions.

In some of the cases Governors have exercised their discretion to withdraw their pleasure. These cases may be classified into two categories a) when the Governor acted on the advice of the Chief Minister and b) without any advice, in his absolute discretion. Though the Governor's action on advice has not invited criticism but the practice is not healthy in the interest of Cabinet system. It would be

consistent with the traditions of parliamentary government, if the Chief Minister resigns and reforms the government after dropping the recalcitrant minister, than asking for his dismissal by the Governor. This advice was given to Charan Singh by Governor.

In 1969, the rift between Congress (R) and BKD, the partners of coalition in UP-the Congress (R) members refused to co-operate with the BKD Chief Minister Charan Singh and also refused to resign. Hence, the Chief Minister advised the Governor to dismiss the Congress (R) ministers. But Congress (R) members put pressure on the Governor. The advice of the Chief Minister was rejected on the ground that "the well recognized principles of parliamentary democracy would not warrant the constituted existence of a coalition Ministry when the coalition is broken and when none of the two parties which formed the coalition commands an absolute majority in the Legislative Assembly. The Attorney General also opined that Chief Minister has no right to advise the Governor to dismiss some ministers of the coalition Ministry - nor would the Governor be constitutionally bound to accept such advice of the Chief Minister. This is all the more so when the Ministers whose removal from office he seeks, represent the major partner.

The second one is the exercise of discretion by the Governor in dismissing the government including the Chief Minister. This has been done under the assumed duty to see that the constitution is maintained, he has equally a duty to see that constitutional principles are not violated." This duty is the logical consequence of taking the oath and keeping it in the forefront, "to preserve, *protect* and defend the Constitution". Further, the Governor should see that Government is responsible and enjoys the confidence of the Assembly. But the question is how to ascertain whether a particular Ministry has the majority support or not. When there is a clear defeat in the House, the case is simple. But when the Ministry is reluctant to face the Assembly and there is floor crossing the situation is complicated. For ex. 'The first, United Front Government in Bengal in 1967 headed by Ajoy Mukherjee, the Rao Birender Singh Government in Haryana in 1967 and the Charan Singh Government in U. P. in 1969. The case of Communist Government in Kerala in 1964 is different because it undisputedly commanded the majority in the Assembly. it was dismissed due to popular upsurge against it which led to the presumption that it had lost the confidence of the electorate. In the case of U.P. and Haryana it may be noted that a) the Government" has not been defeated on the floor of the House b) there was some reluctance on the part of the Government in summoning the Assembly at an early date and c) there was considerable defection and counter-defection from and to the Government. The last two points mainly influenced the respective Governor to think that the Government had lost the majority support. in the Assembly and consequently he was justified in with drawing his pleasure.

The question here is whether the dismissal of the Ministry should be preceded by an Assembly vote signifying loss of confidence, or the Governor can have his own independent assessment and decide in his discretion that the Government has lost such confidence. The views are divergent on this point. As

noted earlier the Committee of Governor emphasized the Governor's right to dismiss in his discretion when there is an adverse expression in the Assembly or in its absence on his own assessment. The other view is that if the Governor feels that the party in power has lost majority support, he should immediately summon the Assembly to know its verdict on the Ministry.

Healthy parliamentary convention requires that Governor should call the Assembly into session and has its verdict on the question of confidence. This view was strongly expressed by the then Governor of Rajasthan, Gurumukh Nihal Singh and the Report of Governor's conference also. Even in Britain the practice is same. However, Governor's powers to summon and prorogue the legislature have not provoked much controversy.

c) Power to dissolve Assembly

Power of dissolution is shared by the Head of the State and the Chief Minister. If it appears that the House has become indisciplined and contrary to the interest of the society and becomes impossible for any Constitutional government to function properly and effectively a Governor may dissolve the Legislative Assembly so also a government which loses majority in the House. Exercise of this power by the Governors can be classified into two types: 1) When the dissolution is followed by a caretaker government and 2) when it is followed by the President's rule under Art. 356. The principal reason for dissolution has been party composition of the House when no stable government of a party or coalition of parties could be formed. Sometimes the Governor, against the advice of the Chief Minister for dissolution, allowed an alternative Government to be formed, but in some other cases he accepted the advice for dissolution. A healthy convention would demand good faith. So, if he advises with the support of the majority, such an advice should not be refused. Thus, the Governor is bound to accept the advice of a Chief Minister to dissolve the Assembly only if the latter has not lost the majority support, but not otherwise.

d) Report to the President under Article 356

The Constitution of India imposes a duty on the Union Government to ensure that the government of a State is run smoothly, effectively and in accordance with the provisions of the Constitution. The proclamation of the breakdown of Constitutional machinery in a State can be based on President's subjective satisfaction or on the Report of the Governor of the State. Art. 356 was applied by the President in 9 States in 1977 and to some States in 1980 on the assumption that the government had lost confidence of the people. In such situations Governor while making the report acts in his discretion and not necessarily on the advice of the Chief Minister. However, the Chief Minister may also advise the Governor for such a report.

e) Use of Article 356

The noted jurist H. M. Sreevai regarding using Art. 356, observed that it will enable the Union Executive to cut at the root of the democratic form of Government in the State. From 20th June 1951 to March 2002, President's rule has been imposed 102 times under Art. 356. Out of this, under Mrs. Indira Gandhi's rule it was imposed 48 times and 16 times under the rule of Morarji Desai and Charan Singh. Again the same was repeated 11 times under P. V. Narsimhrao's period. However, under Pandit Jawaharlal Nehru's time, this Article was used only 7 times, Shastri's regime 2 times, Rajiv Gandhi's regime 6 times, V. P. Singh's regime 2 times, Chandrashekar's regime 4 times, Devegowda's regime 2 times & Vajpeyee's regime 2 times. In this connection, the classic case of dismissal of S. R. Bommai led Janata government in Karnataka on 21st April 1999 by Governor P. Venkatachaliah, the then, Governor may be mentioned. - Though the Chief Minister was ready to face the Assembly on or before 27th April and had claimed the support of 120 MLA's in the 223 member House, the government was dissolved. The Supreme Court in this case, held that the dismissal of Bommai government was unconstitutional. This blunder was again repeated when BJP government led by Suresh Mehta in Gujrat was dismissed on 19th September .1996 though won the vote of confidence in the House on the previous day. In S. R. Bommai's case the Supreme Court observed that to test whether the Ministry enjoys the confidence of the House, the only way is to test it on the floor of the House. The assessment' of the strength of a Ministry is not a matter of private opinion of any individual be he the Governor or the President. The Supreme Court held that it can examine the validity of a Proclamation under Article 356 on three grounds. 1) Whether it was issued on the basis of any material. 2) Whether the material was relevant 3) Whether it was issued mala fide. It held that the Legislative Assembly of a State cannot be dissolved before the Proclamation is approved by both the Houses of Parliament within two months period from the date of Proclamation. The Assembly can be suspended rather than dissolving it. But if Court holds the Proclamation to be invalid then in spite of the fact that it has been approved by the Parliament, the Court can order that the dissolved Ministry and Assembly should be revived.

In the S. R. Bommai Case the Supreme Court quoted the Sarkaria Commission Report to give examples of situations which do not amount to failure of constitutional machinery and for that reason should not be used for imposing Article 356. They are as following:

1. Article 356 cannot be invoked for superseding a duly constituted ministry and dissolving the Assembly on the sole. ground that in the elections to the Lok Sabha, the ruling party in the State suffered a massive defeat.
2. A situation of mal-administration in a State, where a duly constituted ministry enjoys support of the Assembly.

3. Where a ministry resigns or is dismissed on losing majority support and the Governor recommends imposition of President's Rule without exploring the possibility of installing an alternative government.
4. Where no prior warning or opportunity is given to the State Government to correct itself in cases where directives were issued under Arts. 256, 257 etc.
5. The power cannot be invoked merely on the ground that there are serious allegations of corruption against the Ministry.
6. Where a Ministry has not been defeated on the floor of the House, the Governor on his subjective assessment recommends super session and imposition of President's Rule.

In spite of the above -guidelines there is a wide scope for subjective interpretation. If article 356 is examined in the context of Bommai Judgment it is possible that a vigilant judiciary and a steadfast President can prevent the misuse of Art. 356 for partisan ends. It was proved by President K. R. Narayanan who decided to be assertive. In October 1997, the U. F. Government led by I. K. Gujral recommended the dismissal of Kalyan Singh's Government but Narayanan returned Cabinet's recommendation. The United Front Government accepted the Presidential assertion. There after the Uttar Pradesh Governor Romesh Bhandari dismissed the Kalyan Singh Government, (Bhandari gave 48 hours to Kalyan Singh to prove his majority, after BSP withdraw support. Even after Kalyan Singh won the trust vote recommended by Central Rule.) President Narayanan summons I. K. Gujral to Rashtrapati Bhavan a day after Bhandari's misdemeanor. In February 1998 he even wrote to Prime Minister I. K. Gujral suggesting the removal of U. P. Governor. The President again asserted his power in September 1998 when Bihar Governor Sundersingh Bhandari recommended imposition of President's rule in Bihar. The President returned the Cabinet resolution stating that "the condition precedent for invocation of Art. 356 has not been adequately made out.

To sum up, due to political environment of many of the Governors they could not function impartially in most of the cases. For the last 50 years or so of our practice in operationalising the principles of democratic government, the country has not achieved much. The only solace is, still there is hope for improving our practice as we are able to maintain the structure of democratic government.

Check your progress – 3

1. Discuss the role of the Governor.

15.5 LET US SUM UP

In this unit, there is an explanation about the Governor who is the highest executive in the state administration. Governor's appointment, powers, especially his discretionary powers are dealt. Also his constitutional position and role in administration is explained.

15.6 KEY WORDS

1.	Discretion	:	Liberty of action
2.	Repugnant	:	adverse
3.	Remission	:	Forgive
4.	Reprieve	:	Suspend
5.	Permit	:	Pardon
6.	Respite	:	temporary suspension of the execution of the criminal
7.	Onerous	:	burdensome
8.	Relinquish	:	quit

15.7 BOOKS FOR STUDY

1.	D.D. Basu	-	Introduction to the Constitution of India
2.	M.V.Pylee	-	India's Constitution
3.	V.D.Mahajan	-	Select Modern Governments
4.	J.C.Johari	-	Indian Government and Politics
5.	M.V. Pylee	-	Constitutional Government in India
6.	Govt. of India Publication-		Constitution of India

15.8 ANSWERS TO CHECK YOUR PROGRESS EXERCISE

Check your progress - 1

See section 15.2

Check your progress - 2

See section 15.3 & its sub sections

Check your progress - 3

See section 15.4

UNIT 16 THE CHIEF MINISTER AND COUNCIL OF MINISTERS

Structure

- 16.0 Objectives
- 16.1 Introduction
- 16.2 Appointment
- 16.3 Powers of the Chief Minister
- 16.4 The position of the Chief Minister
- 16.5 Council of Ministers
- 16.6 Power of the Council Ministers
- 16.7 Let us sum up
- 16.8 Key words
- 16.9 Books for study
- 16.10 Answers to check your progress exercise

16.0 OBJECTIVES

After going through this unit, the student can understand

- How the office of the Chief Minister is filled
- Know the power and functions of the Chief Minister, and
- Formation of the Council of Minister and its powers and functions

16.1 INTRODUCTION

The Governor is a Constitutional head of state and as such he has to act according to the advice of the Council of Ministers headed by the Chief Minister. As per the rule, executive power lies in the Chief Minister. During the period 1952-1967 in which most of the States were ruled by the Congress Party, at that time it was not difficult for the Governor to appoint the Chief Minister. However, the situation changed when Congress lost power after 1967 in most of the States. Due to this development, the role of the Governor became important as he was required to exercise his discretion due to political crisis. Mr. V. K. Vardachari observed that Governor became the holder of office of strategic importance in times of political crisis.

16.2 APPOINTMENT OF THE CHIEF MINISTER

As per Article 164 (1) the Governor of the State appoints the Chief Minister. This will be easy if one of the parties secure majority in the election. Then the leader of the majority is invited by the Governor to form the government, but if no party secures the majority it will create problems to the Governor in the appointment of the Chief Minister. However, by following the principles given below, Chief Minister can be appointed.

1. If a party secures majority in the election conducted for the State Legislature the leader is selected from the majority party and that person should be appointed as a Chief Minister.
2. Before the holding of the election if few parties form alliance and win the election, the Governor can appoint the leader of such coalition as, Chief Minister.
3. If no party secures majority after the election, if some parties come together and form a coalition for the purpose of forming the government the leader of the coalition parties can be appointed as a Chief Minister.
4. If parties do not secure the majority and are unable to come together to form the coalition government, then the Governor can give the parties some time for the purpose of forming the government and he may recommend emergency for a short time without dissolving the legislature. In the circumstances mentioned above he may consult Advocate General for legal opinion advice.

Problems mentioned above are the result of after holding elections. However, if a Chief Minister resigns or dies it will create problems for the Governor. Generally, the oldest! senior member of the Cabinet may be appointed temporarily as a Chief Minister. In such a situation, the same party may select a different person as their leader. However, if many people compete for the leadership, problem becomes a grave one. Then the Governor has to wait till the leader is selected and the one who has the backing of the majority can be appointed as the Chief Minister.

Above factors are generally considered by the Governor in appointing Chief Minister. However, parties, while selecting the legislative party leader after the election in most of the national level parties, the tradition of selecting the leader as suggested by the Central leadership prevails. This is the practice generally followed by the Congress party. In other words, instead of selecting the legislative party leader through democratic means, Central Party leadership pressurizes to select the person who is loyal to the Central leadership. Moreover, in many instances, the Governor has to appoint a person who is not a member of the State legislature as Chief Minister if the Legislative party so decides. For example, Former Chief Minister in Karnataka, Devaraj Urs, and Ramkrishna Hegde were not the legislators. Later they won the election from Hunsur and Kankapura constituencies respectively. In the same way in UP in 1970, T. N. Singh and V. P. Singh in 1980 became the Chief Ministers. For this, we can add the examples Of Kamraj in Madras (Now Tamil Nadu) in 1954 and Vijay Bhaskar Reddy of Andhra Pradesh in 1982. In other words, a person though not a member of State legislature can become the Chief Minister provided his candidature is supported by the Central leadership or by the legislative party which is having majority and win the election to the legislative Assembly / Council within the six months of his appointment as the Chief Minister.

To become a Chief Minister it is essential to have the confidence of majority of legislators. In addition to this, individual personality, political acumen and shrueness also play an important part for the incumbent. In Karnataka, K.C. Reddy, K. Hanurnanthiah, Nijalingappa, Virendra Patil, Devraj Urs, R.K. Hegde, H. D. Devegouda and the present Chief Minister S. M. Krishna and Jyoti Basu in West Bengal became Chief Ministers due to their hardwork and experience.

There are many instances where the Central leadership imposes a person as a Chief Minister. For example in Maharashtra, Barr. Antule and Gundurao in Karnataka were imposed by Mrs. Indira Gandhi and the present Chief Minister Sushilkumar Shinde by the blessings of Sonia Gandhi. We can add other names like C. P. Gupta in 1960 at UP, T. N. Singh in 1970 in Orrisa, Vishwanath Das in 1971 and Mrs. Nandini Satpati in 1972. In Madhya Pradesh P. C. Sethi in 1992, in Madras C. N. Annadurai in 1967, in Punjab Giani Gurumukh Sing Musaffir in 1966 and Kedar Pande in 1972 in Bihar.

16.3 POWERS AND FUNCTIONS

The Chief Minister's first duty is to select his ministerial colleagues. In this exercise he has to face number of pressures like representation to caste, community, district, language etc. In such a situation, persons who are invited for the Ministership may be unfit to be included in the ministry. If the Chief Minister desires, persons who are not legislators persons from legislative council may become ministers. However, if non-legislators become ministers they must get themselves elected within six months of holding office.

Council of Ministers consists of three types of ministers. They are; a) Cabinet Ministers, b) State Ministers, and c) Deputy Ministers.

1. The Chief Minister has full power to change Minister's portfolios and even dismiss them.
2. Chief Minister being the Chairman of the Ministry is responsible for all acts of the government. He presides over its meetings and the collective responsibility of the ministry to the decision taken rests with him. If any Minister do not agree with the principles of collective responsibility to the legislature, the Chief Minister has the right to ask for the resignation of the Minister concerned and can advice the Governor to dismiss the Minister concerned.
3. The Chief Minister is responsible for informing the Governor regarding the administrative affairs of the State and also the action taken for framing legislation for the welfare and development of the state.
4. He has to inform the Governor of the administrative decisions taken by his Ministry.
5. Chief Minister is the link between the Ministry and the Governor. Hence if any Minister wish to meet the Governor or if the Governor wish to meet a Minister regarding the affairs of the Ministry, they must obtain the permission of the Chief Minister.
6. Chief Minister's consent is required before any bill or governmental decision is placed before the legislature.
7. During the debates in legislature regarding any department, it is the duty of the Chief Minister to protect his government from criticism by giving appropriate reply.
8. He can recommend to the Governor to assemble or dissolve the house.

16.4 THE POSITION OF THE CHIEF MINISTER

Though the Chief Minister has many powers mentioned above, in practice he cannot exercise them under certain conditions. The exercising of power by the Chief Minister depends upon his personality. For example when different parties are in power at Central and State level, Chief Minister can form the Ministry in such a way that they are not influenced by Central leadership. Because a political party wins the election due to the personality and influence of the Chief Minister. For example, M. G. Ramchandran

and Jaylalitha government in Tamilnadu, N. T. Ramarao government in Andhra Pradesh, H. D. Devegowda and S. M. Krishna's government in Karnataka and Jyoti Basu's government in West Bengal are the finest examples of governments by able political leaders (personality and leadership) Naturally, these Chief Ministers need not toe the line of Central leadership in the working of the government. However, it is difficult for those Chief Ministers also to manage the affairs of the State by opposing the Central government. So these types of Chief Ministers neither function as puppets of Central government nor totally oppose the Central government. They follow a middle path in their working. However, in certain instances even in this system if the political parties are of national one then the Chief Minister is influenced by the Central leadership. For example, when Janata Dal government was at the Centre. Congress government was in Karnataka. When Virendra Patil's government was in Karnataka, Rajiv Gandhi suggested for the change of leadership of the Chief Minister. As a result, Virendra Patil has to resign from the office of Chief Minister.

If same party is in power at the Centre and State level the Chief Minister generally enjoys the blessings of the Central leaders. Particularly when Congress party was in power at the State level, instead of selecting the Chief Ministers from the legislative party persons who have the support of Central leaders are appointed directly. Moreover, Central leadership used to change the Chief Minister according to their whims and fancies. This is so because Chief Minister did not have the legislative party support and as a result Central leaders or party President or Prime Minister can control these persons easily. But this was a rare during Janata party rule.

When coalition government is formed in the State it is very difficult for a Chief Minister to become strong and exercise his powers. This is due to the fact that there is no guarantee when the alliance partners withdraw the support. When this fear is in mind the Chief Minister has to run the government very carefully. This type of governments were not successful except in the State of Kerala. Governor can object to the decisions taken by the Chief Minister. For example, in 1970 in UP, when coalition government was constituted under the Chief Ministership of Charan Singh, he recommended to the Governor to dismiss the Ministers from the Ministry. In this case Governor ruled that the Chief Minister has no power to dismiss the Minister from a coalition Ministry. It is also construed that this procedure is against the parliamentary system and Governor should listen the advice of the Chief Minister.

To put in nut shell, if the Chief Minister enjoys support of the legislative party he can function effectively. It is possible to have such a support only if the election is won by the political acumen of the Chief Minister. For example, Jyoti Basu in West Bengal, M. A. Annadurai, M. J. Ramchandran and Jaylalitha in Tamilnadu, N. T. Ramarao and Chandrababu Naidu in Andhra Pradesh were / are not only powerful, but also they were / are powerful in their parties also.

16.5 COUNCIL OF MINISTERS

Chief Minister is head of the Ministry and he chooses those who are capable and loyal to the party in power as his ministerial colleagues. The number of ministers' to be included in the Ministry is entirely left to the sweet will of the Chief Minister as there are no legal limits. So also the number of ministers to be included in different categories i.e. a) Cabinet Ministers b) Minister of State c) Deputy Minister. However, Administrative Reforms Commission has recommended that the number of Ministers should be 1/10 of total number of members of the Legislative Assembly. But this recommendation is not followed in practice in any State. For example in 1967, Congress Government in Haryana had 41 MLA's and out of it 23 became ministers. So also in Maharashtra Sushil Kumar Shinde Ministry and the earlier one led by Vilasrao Deshmukh did not follow the recommendations of Administrative Reforms Commission.

Salary and Allowances:

There is no hard and fast rule regarding the salaries and allowances of the Ministers. Fixing of their salaries and allowances is entirely left to the State Legislature. For example, as per rule framed in 2000 the Chief Minister in Karnataka gets. Rs. 6000/-, Rs. 5000/- for Cabinet Minister, Rs. 4000 for Minister of State and Rs. 3500/- for Deputy Minister per month. Under the same rule the Chief Minister and Cabinet Ministers were permitted to spend Rs. 750001- per annum as expenditure on hospitality and for Ministers of State it was Rs. 50000/-and Deputy Minister Rs. 40000/-. Ministers also get House Rent Allowance of Rs. 10000 /- per month and Rs. 5000 /- as Maintenance Charges.

Moreover, all of them get Rs. 8/- per kilometer as traveling allowance. Dearness allowance per day within the State is Rs. 800/-and outside the State it is Rs. 1000/-.

16.6 POWERS AND FUNCTIONS OF THE MINISTRY

1. To formulate the policies of the State government.
2. To implement the law passed by the Central and the State government.
3. To implement the orders I instructions of the President of India.
4. To decide on important appointments and recommend them to the Governor.
5. For the purpose of placing before the State Legislature, all necessary arrangement be made for the formulation of laws.
6. On important matters Ministry can recommend to the Governor to promulgate ordnances when the Legislature is not in session.
7. To recommend to the Governor for summoning and dissolving the Assembly.
8. To prepare the Governor's speech for first session of the Legislature.

9. To obtain the permission of the Governor for the Budget estimate prepared by the Finance Minister of the State.
10. Constituting the Commissions, determining reservation, to prepare the civil service rules etc.

Check your progress – 1

1. Explain the appointment and powers of the Chief Minister.
2. Discuss the powers of the Council of the Minister.

16.7 LET US SUM UP

In this unit, the office of the Chief Minister, appointment, powers and functions are dealt. Then the position of the Chief Minister in the Council of Ministry in a state is also explained, together the powers and functions of the Council of Ministry is also discussed.

16.8 KEY WORDS

- | | | | |
|----|-----------|---|-----------------------------|
| 1. | acumen | : | perception, sharpness |
| 2. | incumbent | : | One who occupies the office |
| 3. | construe | : | interpret |

16.9 BOOKS FOR STUDY

- | | | | |
|----|------------|---|---|
| 1. | D.D. Basu | - | Introduction to the Constitution of India |
| 2. | M.V.Pylee | - | India's Constitution |
| 3. | J.C.Johari | - | Indian Government and Politics |

16.10 ANSWERS TO CHECK YOUR PROGRESS EXERCISE

Check your progress - 1

1. See section 16.2
2. See section 16.6

Structure

- 17.0 Objectives
- 17.1 Introduction
- 17.2 Composition of the Legislative council
- 17.3 Powers and functions of the Legislative Council
- 17.4 Composition of the Legislative Assembly
- 17.5 Powers and functions of the Legislative Assembly
- 17.6 Let us sum up
- 17.7 Key words
- 17.8 Books for study
- 17.9 Answers to check your progress exercises

17.0 OBJECTIVES

After going through this unit the students will understand

- The composition of the State Legislature and
- Powers and functions of the State Legislature

17.1 INTRODUCTION

The Legislature of a State consists of the Governor and two houses. The upper house is known as Legislative Council and the Lower House is known as Legislative Assembly. In practice, as on 2001 only Karnataka, Maharashtra, Uttar Pradesh, Jammu and Kashmir and Bihar have two houses. The Upper House in Andhra Pradesh, Tamilnadu, Punjab and West Bengal were abolished as a result of the resolution of the respective States by the Parliament of India. The method of abolition or creation of the Legislative Council are simple and do not require an amendment to the Constitution.

17.2 COMPOSITION OF THE LEGISLATIVE COUNCIL

The total number of members in the Legislative Council of a State having such a Council cannot exceed one-third of the total number of members in the Legislative Assembly in that State. But the Constitution also provides that the total number of members in the Legislative Council shall in no case be less than forty. The members of the Council are chosen in the following manner.

- a) One-third of the members are elected by electorates consisting of members of municipalities, district boards and such other local authorities in the State as parliament may by law specify.
- b) One-twelfth of the members are elected by electorate consisting of persons residing in the State who have been for at least three years graduates of any university in the territory of India or have been in possession of qualifications prescribed by Parliament as equivalent to those of a graduate.
- c) One-twelfth of the members are elected by electorates consisting of persons who have been for atleast three years engaged in teaching in educational institutions within the State, not lower in standard than that of a secondary school.
- d) One-third of the members are elected by the members of the Legislative Assembly of the State from amongst persons who are not members of the Assembly.
- e) The remaining members are nominated by the Governor. Such members consist of persons having special knowledge or practical experience in respect of such matters as literature, science, art, co-operative movement and social service.

The Legislative Council is not subject to dissolution. But one third of its members retire every second year. The term of an individual member is six years.

Check your progress – 1

1. Explain the composition of the Legislative Council.

17.3 POWERS AND FUNCTIONS OF THE LEGISLATIVE COUNCIL

Any Bill except a Money Bill can originate in the Legislative Council. In money matters Legislative Council has no power. A Bill is not deemed to have been passed if it has not been agreed to by the Legislative Council if there is such a Council in the State. But there are certain restrictions on the powers of the Legislative Council. If the Council rejects a Bill passed by the Assembly or it does not consider it for three months or passes it with amendments to which the Assembly does not agree, the Assembly may pass the Bill again and transmit it to the Council. If the Council again rejects the Bill or more than one month elapses from the date on which the Bill is laid before the Council without the Bill being passed by it or the Bill is passed by the Council with amendment to which the Assembly does not agree, the Assembly may pass the Bill again and transmit it to the Council. Bill is deemed to have been passed by both the Houses of the Legislature in the form in which it was passed by the Legislative Assembly for the second time. It means that the Legislative Council does not have co-equal legislative powers with the Assembly.

The Council can put questions and supplementaries to Ministers relating to public administration and discuss and pass resolutions on matters of public importance. But it cannot force the Cabinet to resign as the Council of Ministers is responsible to the Legislative Assembly and not to the Council.

Check your progress – 2

Examine the powers of the Legislative Council

17.4 LEGISLATIVE ASSEMBLY

17.4.1 Composition

Legislative Assembly is the popular house and commonly known as the Vidhan Sabha. Its members are elected directly from territorial constituencies. The election is on the basis of adult franchise, the maximum number prescribed by Art. 170 is 500 and the minimum is 30 for smaller states like Goa, Arunachal Pradesh and the largest is that of U. P. having 403 members. In the Legislative Assemblies

seats are reserved for SCs and STs on the basis of their population in the State (Art. 332). The Governor has the power to nominate one member of the Anglo-Indian community if he is of the opinion that the community is not adequately represented in the Assembly (Art. 333). In the States of Arunachal Pradesh, Meghalaya, Mizoram and Nagaland the Scheduled Tribes are in over whelming majority yet the Constitution reserves seats for them. As per law reservation is to last till the year 2010.

17.4.2 Tenure of the Assembly

The duration of every Assembly is 5 years. But while a Proclamation of Emergency is in operation the term may be extended by Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate. The Governor has the power to dissolve the Assembly before the expiration of its term.

The qualifications necessary for election to the Assembly are i) that a person must be a citizen of India; ii) must not be less than 25 years of age; and ill) must posses other qualifications prescribed by Parliament.

The Legislative Assembly chooses two of its members to be Speaker and Deputy Speaker thereof. They vacate their office if they cease to be members of the Assembly. They may also be removed from their office by a resolution of the Assembly passed by a majority of all the then members of the Assembly. It is also provided that whenever the Assembly is dissolved, the Speaker does not vacate his office until immediately before the first meeting of the Assembly after dissolution.

The Speaker presides over the sittings of the Assembly and in his absence the Deputy Speaker presides. Save as otherwise provided in the Constitution, all questions at any sitting of the Assembly are determined by a majority of votes of the members present and voting, other than the Speaker. The Speaker does not vote in the first instance, but has and exercises a casting vote in the case of an equal division of votes.

The Governor summons the Legislative Assembly from time to time, but it is provided that six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session. The Governor may from time to time prorogue the Assembly. He has also the right to dissolve it. The quorum to constitute a meeting of the Assembly is ten members or one-tenth of the total number of members whichever is greater.

The Governor may address the Legislative Assembly or both Houses assembled together, if the State has a Legislative Council. The Governor may send messages to the Assembly, whether with respect to a Bill then pending in it or otherwise and the Assembly has to consider any matter required by the

message to be taken into consideration. At the commencement of the first session after each general election to the Legislative Assembly the Governor addresses the Assembly or, both Houses assembled together, if the State has a Legislative Council.

17.5 POWERS OF THE LEGISLATIVE ASSEMBLY

17.5.1 Legislative Powers.

In the State in which there is no Legislative Council, the Legislative Assembly has power to make laws on any matter contained in the State List. In the State which has a Legislative Council the position is slightly different but there also it is the will of the Assembly that ultimately prevails. A Bill except a Money Bill may be introduced in either House of the Legislature. Ordinarily a Bill is not deemed to have been passed by the Houses of the Legislature of a State having a Legislative Council unless it has been agreed to by both Houses. But if a Bill passed by the Legislative Assembly is rejected by the Legislative Council or more than three months elapsed from the date on which the Bill is laid before the Council with amendments to which the Legislative Assembly does not agree, the Legislative Assembly may pass the Bill again and transmit it to the Council. If the Legislative Council again rejects the Bill or more than one month elapses without the Bill being passed by it, or the Bill is passed by the Council with amendments to which the Assembly does not agree, the Bill is deemed to have been passed by the Houses of the Legislature in the form in which it was passed by the Assembly for the second time.

The Legislative Assembly also has power to legislate on matter included in the Concurrent List. But a Legislative measure enacted by Parliament on a matter included in the concurrent list supersedes the State Law if the latter conflicts with the former.

The power of the Legislative Assembly to legislate on matters given in the State List is not absolute. The Constitution imposes many restrictions. Some laws have to be reserved for the consideration of the President and become invalid if not assented to by him. Some Bills require previous sanction of the President before they can be introduced in the State Legislature. Parliament has the power to legislate on a matter included in the State List if the Rajya Sabha declares by a resolution passed by a majority of two-thirds of the members present and voting that the matter is of National importance. While a proclamation of Emergency is in operation, Parliament can make laws on any subject contained in the State List. In the case of failure of the Constitutional machinery in a State, the President may suspend the State Legislature and vest its powers in Parliament.

17.5.2 Financial Powers.

All Money Bills originate in the Legislative Assembly. After Money Bill has been passed by the Legislative Assembly of a State having a Legislative Council, it is sent to the Council which has to return it within fourteen days with its recommendations. But the Assembly is not bound to accept the recommendations of the Council, The Annual Financial Statement or the Budget is laid before the House or Houses of the State Legislature. All proposals for expenditure are submitted to the Assembly in the form of demands for grants. The Assembly has power to assent or to refuse; assent to any demand, subject to a reduction of the amount specified therein. However, the sums of expenditure charged on the Consolidated Funds of the State can be discussed but not voted upon by the State Legislature.

17.5.3 Administrative Control.

Legislative Assembly exercises control over the administrative machinery of the State in general and on the Council of Ministers in particular. The Council of Minister is formed out of the Assembly and is collectively responsible to it. The members of the Assembly can seek information from Ministers on any matter relating to the administration of the State by means of questions and supplementaries. The Assembly can pass a vote of censure against the Council of Ministers. Finally, the Assembly has the power to dismiss the Council of Ministers by passing a vote of no-confidence against it.

17.5.4 Electoral Powers.

The elected members of the Assembly of every State take part in the election of the President of India, The representatives of each State in the Council of State (the Rajya Sabha) are elected by the elected members of the Legislative Assembly of the State. One-third of the members of the Legislative Council of the State in which there is such 'a Council, are elected by the members of the Legislative Assembly of the State from amongst persons who are not members of the Assembly.

Check your progress – 3

1. Explain the composition of the Legislative Assembly.
2. Examine the powers of the Legislative Assembly.

17.6 LET US SUM UP

In this unit, the Legislature of the State is explained. State Legislature has two houses. Their composition, powers and functions are explained in this unit.

17.7 KEY WORDS

- | | | | |
|----|----------|---|--|
| 1. | deemed | : | considered |
| 2. | transmit | : | pass on |
| 3. | elapse | : | pass away |
| 4. | Prorogue | : | adjourn the meeting of the Legislature for some time |

17.8 BOOKS FOR STUDY

- | | | | |
|----|------------|---|---|
| 1. | D.D. Basu | - | Introduction to the Constitution of India |
| 2. | M.V.Pylee | - | India's Constitution |
| 3. | J.C.Johari | - | Indian Government and Politics |

16.9 ANSWERS TO CHECK YOUR PROGRESS EXERCISE

Check your progress - 1

See section 17.2

Check your progress - 2

See section 17.3

Check your progress - 3

1. See section 17.4.1
2. See section 17.5 and its sub-sections.

UNIT 18 HIGH COURT – COMPOSITION AND JURISDICTION

Structure

- 18.0 Objectives
- 18.1 Introduction
- 18.2 Constitution of the High Court
 - 18.2.1 Appointment
 - 18.2.2 Tenure
 - 18.2.3 Salary
 - 18.2.4 Qualifications
- 18.3 Independence of the Judges
- 18.4 Jurisdiction of the Court
 - 18.4.1 Writ Jurisdiction
 - 18.4.2 Power of Superintendence
 - 18.4.3 Control over Sub-ordinate Courts
- 18.5 Let Us Sum up
- 18.6 Key words
- 18.7 Books for study
- 18.8 Answers to check your progress exercises

18.0 OBJECTIVES

After going through this unit, you will be able to understand

- The composition and
- The Jurisdictions of the High Court

18.1 INTRODUCTION

The High Court is at the apex of the judiciary in the State but every State in India does not have a separate High Court. The Constitution provides that Parliament may by law establish a common High Court for two or more States or for two or more States and a Union Territory (Art. 231). This is done with a view that States/Union Territories having less population need not have same type of judicial administration as the rest of India. Below the High Court the District Court and Session Judges Courts. The City Civil and Sessions Court, the Chief Judicial Magistrate, the Chief Metropolitan Magistrate, Muncifs and other Magistrate come under the jurisdiction of the High Court. The tribunals operating in the State are subject to the writ and supervisory jurisdiction of the State High Court. After Chandra Kumar's case it is made clear that all decisions of the tribunals created under Art. 323A and 323B are subject to scrutiny by a division bench of the High Court. The Constitution envisages a general pattern of judiciary where every State has a High Court at the Head of the judiciary. Similarly, Parliament may by law extend the jurisdiction of a High Court from a Union Territory. Thus, we have the High Court at Guwahati serving seven States. The Punjab & Haryana High Court is the High Court for Punjab, Haryana and the Union Territory of Chandigarh. Delhi has a High Court of its own. With the creation of three new States in 2000, we have 21 High Courts at present.

There is no uniform policy in setting up of High Court benches. The Nagpur, Jaipur and Aurangabad benches were constituted for historical reasons. The largest High Court at Allahabad has only one bench.

18.2 CONSTITUTION

Every High Court consists of a Chief Justice and such other judges as the President may from time to time appoint (Art. 216). Besides these judges there is provision for appointment of additional and acting judges. This is done keeping in view the workload. An acting judge is appointed where a judge is not able to attend to his duties by reason of absence or for any other reason. The Chief Justice of a High Court may with the previous consent of the President request a retired judge of a High Court to sit and act as a judge of a High Court.

18.2.1 Appointment of Judges:

A judge of a High Court is appointed by the President (Art. 217) after consultation with (a) the Chief Justice of India (b) the Governor of the State and (c) in case of appointment of a judge other than the Chief Justice of the High Court, the Chief Justice of the High Court.

After the Third judges case instead of the Chief Justice of India the consultation will be with a collegium consisting of the Chief Justice and two senior most judges of the Supreme Court. The sole individual opinion of the Chief Justice of India does not constitute consultation. The collegium should take into account the opinion of the Chief Justice of the High Court which would be entitled to the greatest weight. They should also consider the views of other judges of the High Court who may have been consulted and the judges of the Supreme Court who are conversant with the affairs of the High Court concerned. In the last category are judges who worked in the High' Court as a judge or Chief Justice. All these views should be expressed in writing and conveyed to the Government of India with the recommendation.

18.2.2 Tenure

Every permanent judge of a High Court holds office until he attains the age of 62 years. An additional or ad-hoc judge holds office for the period specified in the appointment. An additional judge can be appointed for a period not exceeding two years.

A judge may by writing a letter addressed to the President may resign his office. The office is vacated when a judge is transferred to another High Court or is elevated to the Supreme Court. A judge hold office during the pleasure of the President. A High Court judge may be removed for proved misbehavior or incapacity only and that too by the same procedure for impeachment as is applicable in the case of a Supreme Court judge under Art. 124 (4). In other words, a judge of High Court may be removed from his office by the order the President passed after an address by each house of Parliament supported by majority of not less than two-thirds of the members of the House present and voting.

18.2.3 Salary

A judge of a High Court is paid a salary of Rs. 26000/- p.m. The Chief Justice gets Rs. 30000/- p.m. The High Court judges (Condition of Service) Act 1954 contains the rules applicable to judges for leave, pension and other retirement benefits.

18.2.4 Qualifications for Appointments

A person is not qualified for appointment as a judge of a High Court unless he is a citizen of India and has for at least served ten years in a judicial office in the territory of India or for at least ten years been an advocate of a lower court or of two or more such courts in succession.

Check your progress – 1

1. Discuss the composition of the High Court.

18.3 INDEPENDENCE OF THE JUDGES

The Constitution seeks to maintain in many ways, the independence of the High Court Judges. They are;

1. The appointment is made by the President in consultation with the Chief Justice of India and two most senior judges of the Supreme Court. The proposal is initiated by the Chief Justice of the High Court concerned. This is to ensure that appointment is made on merits alone.
2. Judges are allowed and are expected to work without fear or favour with no interference by the executive. Being a court of record the High Court can utilize the power to punish for contempt and dissuade attempts to influence the judges.
3. A judge can be removed only for proved misbehaviour or incapacity. The procedure for removal is exactly the same as is prescribed by Art. 124 for a Supreme Court judge. The President orders removal after receiving an address passed by both the Houses of Parliament by a majority of total membership and a majority of not less than 2/3rd of the members voting in each House. The tenure of a judge is not dependant on the pleasure of the executive.
4. The doctrine of pleasure is not applicable to a judge. holds office till he retires or resigns his office.
5. The officers and servants of a High Court are appointed by the Chief Justice and the salaries and allowance payable to them are charged on the Consolidated Fund of the State.
6. The salary, allowances, pensions, leave of absence and other perquisites of a judge shall be determined by the Parliament by law. After a judge is appointed the salary, allowance etc. shall not be varied to his disadvantage.
7. The conduct of a judge in discharge of his duties cannot be the subject matter of discussion either in Parliament or in the State Legislature.
8. A retired judge is prohibited from pleading or acting in any court or before any authority except the Supreme Court and other High Courts.
9. Any dispute regarding the age of a judge is to be determined on the advice of the Chief Justice of India.

18.4 JURISDICTION AND POWERS

The Constitution of India does not define in detail, the jurisdiction of the High Court. It is provided that subject to the provision of the present Constitution and top the provisions of any law of appropriate Legislature, the jurisdiction of the High Court shall be the same as immediately before the commencement of the Constitution.

The High Courts are primarily courts of appeal. They have original jurisdiction only in matters of admiralty, probate, matrimonial, Contempt of Court, enforcement of fundamental rights and cases ordered to be transferred from a Lower Court involving the interpretation of the Constitution.

18.4.1 Writ Jurisdiction:

Writ Jurisdiction is also called extra-ordinary Jurisdiction. In exercise of this Jurisdiction a writ, direction or order may be issued by a High Court to any inferior Court or tribunal or any State or any authority or person who acts as agency or instrumentality of the State or exercises the powers of the State. The power is specifically conferred by Art. 226 and cannot be whittled down or taken away by ordinary legislation. The Supreme Court has laid down that the Jurisdiction conferred upon the High Court under Art. 226 and 227 and upon the Supreme Court under Art. 32 is part of the enviable basic structure of our Constitution. This means that Parliament cannot alter or amend the Constitution to abridge or take away the Jurisdiction created by Art. 226.

On appeal side the Courts hear appeals in Civil and Criminal Cases from their subordinate courts as well as from their original side.

In addition to the above original and appellate jurisdiction the Constitution has vested the High Courts with four other powers: 1) the power to issue directions, orders or writs including writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo-warrant and Certiorari or any of them for the enforcement of the fundamental rights and for any other purpose: 2) power of superintendence over all subordinate courts and tribunals: 3) the power to transfer to themselves cases pending in the subordinate courts involving substantial question of law as to the interpretation of the Constitution: and 4) the power to appoint officers and servants of the Courts.

Art. 226 employes the expression of directions, orders or writs. Ever since the eightys the courts have disregarded Locus-Standi and encouraged public interest litigation. Now, generally directions and orders are issued without specifying a particular writ.

18.4.2 Power of Superintendence:

Under Art. 227 every High Court has power of Superintendence over all courts and tribunals through out the territories in relation to which it exercises jurisdiction. This power of Superintendence is wider and more effective than the control exercised by writs under Art. 226. A writ may be issued at the instance of the affected party and relief is confined to the facts and parties. In exercise of Superintendence Suo-Moto orders may be issued. Directions can be given. Rules framed for exercise of power. Superintendence covers both administrative as well as judicial.

However, the High Court should intervene in cases of gross injustice or non-exercise or abuse of jurisdiction even though there is no provision for appeal or revision. The High Court exercises jurisdiction under Art. 227 in the following cases.

- a. excess of jurisdiction
- b. erroneous assumption of jurisdiction
- c. improper refusal to exercise jurisdiction
- d. error of law apparent on the face of the record
- e. violation of rules of natural justice
- f. perverse finding
- g. disregarding the law laid down by the Supreme Court or the High Court
- h. gross injustice

Under Art. 227 following powers are expressly conferred on the High Court in relation to the Court apart from the general all encompassing power of Superintendence. These are;

18.4.3 Control over Subordinate Courts:

- a. the High Court may call for returns from the subordinate courts.
- b. It may make rules and prescribe forms for the Lower Courts
- c. It may prescribe forms in which records will be kept by the officers of the Courts.

The initial appointment of a District Judge or Additional District Judge is made by the Governor who has to act in consultation with the High Court. (Art. 233) However, the posting and promotion of persons belonging to State Judicial service (other than District Judges) exclusively rests with the High Court. (Art. 235).

Art. 235 expressly states that the control over District Courts and Courts below it vests in the High Court. The control is administrative, judicial and disciplinary. It can impose punishment other than dismissal, removal or reduction in rank. In the matter of dismissal, removal and red reduction also the High Court may recommend such punishment to the Governor.

Check your progress – 2

1. How the independence of the High Court is safeguarded ?
2. Explain the jurisdiction of the High Court.

18.5 LET US SUM UP

High Court is the highest court at the state level (which is a unit of the Indian federation). The court is sub-ordinate to the supreme court. But has its jurisdiction in its way. In this unit, constitution of the High Court and its jurisdiction is discussed.

18.6 KEY WORDS

- | | | | |
|----|-----------|---|---|
| 1. | dissuade | : | hinder, advise against |
| 2. | admiralty | : | Board of the government office which manages naval offers |
| 3. | Probate | : | official proving of will |

18.7 BOOKS FOR STUDY

- | | | | |
|----|-------------|---|---|
| 1. | D.D. Basu | - | Introduction to the Constitution of India |
| 2. | M.V.Pylee | - | India's Constitution |
| 3. | V.D.Mahajan | - | Select Modern Governments |

18.8 ANSWERS TO CHECK YOUR PROGRESS EXERCISE

Check your progress - 1

See section 18.2 and its subsections

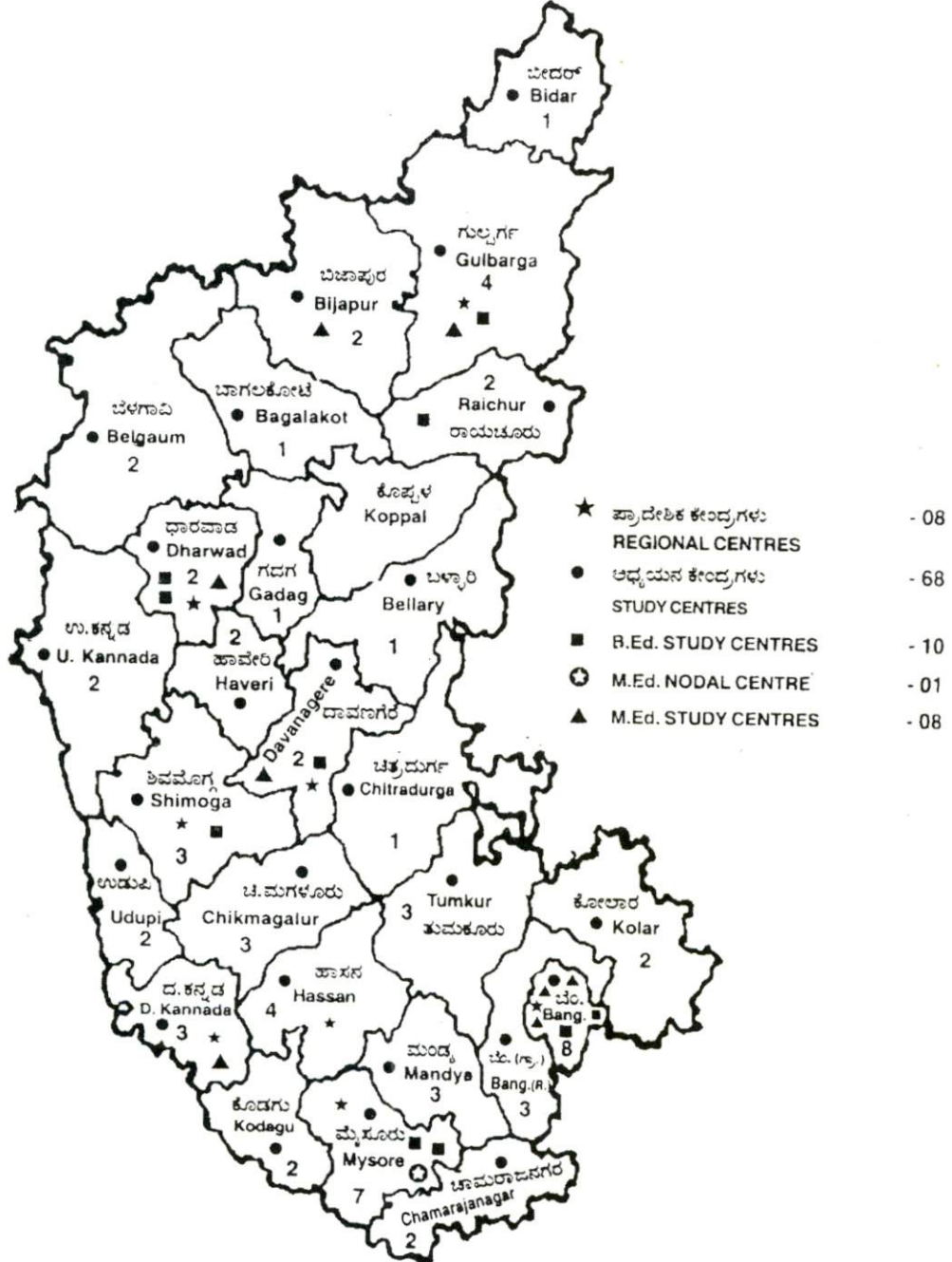
Check your progress - 2

3. See section 18.3
4. See section 18.4

NOTES

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ಕರ್ನಾಟಕ ರಾಜ್ಯ ಮುಕ್ತ ವಿಶ್ವವಿದ್ಯಾನಿಲಯದ ಪ್ರಾದೇಶಿಕ ಹಾಗೂ ಅಧ್ಯಯನ ಕೇಂದ್ರಗಳು
Regional and Study Centres of Karnataka State Open University



(ಸಮೂಹಿಸಿರುವ ಅಂಕಿ - ಜಿಲ್ಲೆಯಲ್ಲಿರುವ ಒಟ್ಟು ಅಧ್ಯಯನ ಕೇಂದ್ರಗಳ ಸಂಖ್ಯೆಯನ್ನು ಸೂಚಿಸುತ್ತದೆ.)
(The Number indicate the total number of study Centres existing in that districts.)

