



# SNS COLLEGE OF TECHNOLOGY

19HST103- INDIAN CONSTITUTION

## UNIT-IV STATE GOVERNMENT

### **Powers and Functions of Governor**



#### **Governor and His Function:**

- The Governor is the official executive head of the state.
- He forms a major part of the state executive where he serves as the chief executive head.
- The central government nominates a governor for every state.
- The executive body of the state is made up of the Governor, the Chief Minister, the Council of Ministers, and the Advocate General of the State.
- The Governor, as the President, is the head of the state government. Article 153-167 in the Indian Constitution deals with the provisions relating to the state governments of the country.

The governor is a nominal head or constitutional head and at the same time, he is the centre's agent as the central government nominates the governor in each state.

- In India, the governor is the constitutional head and all the executive functions of the state are carried out in the name of the governor.
- They are head of twenty-nine states and seven union territories.
- The Governor of India should act on the advice of the council ministers headed by the Chief Minister.
- While states are ruled by governors, union territories are ruled by lieutenant governors or administrators.

#### **Powers And Functions Of The Governor:**

The Governor of the State has Executive, Legislative, Financial, and Judicial Powers which are summarized as follows.

## **1. Executive Powers of the Governor:**

- Every executive action taken by the State Government is to be done in his name.
- They may/ may not make rules to facilitate the transaction of business of the State Government.
- They appoint the Chief Ministers and other ministers of the states.
- Governor has the power to appoint a Tribal Welfare Minister in the states of Chhattisgarh, Jharkhand, Madhya Pradesh, and Odisha (The 94th Amendment Act, 2006 excluded Bihar)
- Governor appoints the Advocate General of the states and fixes their remuneration
- Governor appoints the State Election Commissioner and the Chairman and members of the State Public Service Commission.
- He also appointed vice-chancellors of universities in the state.
- He sought information from the state government
- A constitutional emergency in the state is recommended by the President. During the President's rule in the state, the Governor has extensive executive powers as the agent of the President.

## **2. Legislative Powers of the Governor:**

- It is in his power to prorogue the state legislature and dissolve the state legislatures.
- If a bill is pending in the state legislature, the governor can/cannot send the bill related to it to the state legislature.
- If the Speaker of the Legislative Assembly is absent and he is the Deputy Speaker, the Governor appoints a person to preside over the session.
- As the President nominates 12 members to the Rajya Sabha, the Governor appoints the members of the Legislative Council from the following fields: Literature, Science, Art, Co-operative, Movement
- As the President nominates 2 members to the Lok Sabha, the Governor nominates 1 member from the Anglo-Indian community to the State Legislative Assembly.

### **3. Financial Powers of the Governor:**

- He ensures that the Annual State Budget is placed before the State Legislature.
- His recommendation is a pre-requisite for introducing a Money Bill in the State Legislature
- He recommends a demand for grants that cannot be given otherwise.
- The Contingency Fund of the State is under him and he makes advances to meet the unforeseen expenditure.
- it also constitutes a Finance Commission after every 5 years to review the financial position of Panchayats and Municipalities.

#### **4. Judicial Powers of the Governor**

- He has the power to grant pardon, relief, suspension of punishment, remission of remission to any person convicted of any offence against any law.
- In consultation with the state High Court, Governor makes appointments, postings, and promotions of the district judges.
- He also makes appointments of persons to the judicial services in consultation with the State High Court and the State Public Service Commission.

### **Constitutional Position of Governor:**

As the governor is the nominal head of the state, he does not have the right to exercise real power. The real power lies in the Chief Minister and the Council of Ministers. While analyzing its constitutional position, specific reference should be made which is laid down in Articles 154, 163, and 164.

#### **The Constitutional Position of the governor is provided in the following article.**

- Article 154 – He is the executive head of the state. All executive functions shall be performed by him or by officers subordinate to him by the Constitution.
- Article 163 -He shall be aided and advised by the Chief Minister and the Council of Ministers unless he is acting in his discretion
- The power to act at his discretion is a power that is not given to the President.
- 42nd Amendment Act suggested the Council of Minister's binding on the President but not on the Governor in the State

- Article 164-The Council of ministers is collectively responsible for the state legislative assembly.
- Article 256-states that every State shall exercise its executive powers by the laws made by Parliament. ,

The Constitutional Amendment was amended in 1976. in process of the control of the Lieutenant Governor. For this reason, it should be conscious. The decision of the Governor is final, if any question arises whether the matter is in the discretion of the Governor or not. Therefore, it can be said that they have constitutional discretion but their action should be under the direction of the Central Government.

### **State Wise Current Governors in India:**

<b>State</b>	<b>Governor</b>
Andhra Pradesh	Biswabhusan Harichandan
Arunachal Pradesh	Brig. B.D. Mishra
Assam	Prof. Jagdish Mukhi
Bihar	Phagu Chauhan
Chhattisgarh	Sushri Anusuiya Uikey
Goa	Shri P.S. Sreedharan Pillai
Gujarat	Acharya Dev Vrat

<b>State</b>	<b>Governor</b>
Haryana	Shri Bandaru Dattatreya
Himachal Pradesh	Shri Rajendra Vishwanath Arlekar
Jharkhand	Shri Ramesh Bais
Karnataka	Shri Thaawar chand Gehlot
Kerala	Arif Mohammad Khan
Madhya Pradesh	Shri Mangubhai Chhaganbhai Patel
Maharashtra	Bhagat Singh Koshiyari
Manipur	La Ganesan
Meghalaya	Shri Satya Pal Malik
Mizoram	Dr. Hari Babu Kambhampati
Nagaland	Prof. Jagdish Mukhi
Odisha	Ganeshi Lal
Punjab	Bunwari Lal Purohit

<b>State</b>	<b>Governor</b>
Rajasthan	Kalraj Mishra
Sikkim	Ganga Prasad
Tamil Nadu	RN Ravi
Telangana	Tamilisai Soundararajan
Tripura	Shri Satyadeo Narain Arya
Uttar Pradesh	Smt. Anandiben Patel
Uttarakhand	Gurmit Singh
West Bengal	Jagdeep Dhankar

### **Chief Minister and Council of Ministers**

- The President of India is only a nominal head of the State.
- The council of ministers headed by the prime minister is the most powerful Institution in Indian body politics.
- About the role of the Council of Ministers in India, with the Chief Minister as the head, the Indian Constitution provides in Article 163,
- “There shall be a Council of Ministers with the Chief Minister as the head to aid and advise 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.”

- But as there is a representative form of Government in India, the people’s representatives, i.e., the Council of Ministers with the Chief Minister as the head, hold the key.
- They play the part of the real executive of the State.

## **Powers and functions of the council of minister:**

Like the Central Council of Ministers, the State Council of Ministers is the actual executive authority of the State.

**The main powers and the functions of the State Council of Ministers are the following:**

### **1. Formation of Policy:**

- The State Council of Ministers plays a major role in policy-making according to which the State Government is to run.
- All major problems concerning the different departments are collectively discussed, and a line to be followed is chalked out.
- Within this framework, the different ministers formulate their rules to run their departments.

### **2. Control over the Administration:**

- It is the Council of Ministers that uses all the executive powers of the State.
- To run the administration smoothly and efficiently, it is divided into different departments, and each department is put under a minister’s charge.
- Under a ministry, there are many senior and junior bureaucrats who work according to his guidelines.

### **3. Appointments:**

- All the important appointments in the State are made by the Governor but only on the advice of the Council of Ministers.
- In practice, the Council of Ministers decides on all important appointments, and the Governor makes the appointments per the decision taken by the Council of Ministers.

### **4. Enforcement of Laws and Maintenance of Order:**

- It is the role of the Council of Ministers in India to enforce all the laws passed by the State Legislature.
- There is no use of laws unless they are enforced properly.
- Whether a law is enforced properly depends upon the Council of Ministers.
- Maintaining peace and order in the State is also the role of the Council of Ministers in India.

### **5. Formulation of Legislative Proposals:**

- Most of the legislative proposals or bills introduced in the State Legislature are formulated by the Council of Ministers. Such bills are called Government Bills.
- The Council of Ministers not only prepares the bills but also introduces them to the State Legislature and sees that they are passed by it.
- Because the Council of Ministers has its majority in the State Legislature, they feel no difficulty getting their bills passed.

### **6. Introduction of Money Bills and Preparation of Budget:**

- The Money Bills involving any income and expenditure can be introduced in the State Legislature only by the Government or any member of the Council of Ministers.
- None other than the Council of Ministers can introduce such a bill in the State Legislature



## **The individual and collective role of the council of ministers:**

- It is the individual role of the council of ministers in India to manage the smooth running of his department.
- He has to answer all types of questions in the state legislature regarding his department and The ministers are collectively responsible to the State Legislature for their acts of omission and commission.
- If the Chief Minister resigns, it is regarded as the resignation of all the ministers.

## **Powers of chief Minister in Relation to the Council of Ministers:**

**The Chief Minister occupies the central place in the clerical hierarchy of the State. He enjoys powers as follows:**

1. The Chief Minister is the master of his Council of Ministers. He is free in selecting his ministers. The Governor appoints all the ministers only on the advice of the Chief Minister.
2. The Chief Minister can ask for the resignation of any minister whenever he so desires.
3. The Chief Minister distributes different portfolios among his ministers.
4. The Chief Minister is the keystone of the Cabinet arch. He presides over the meetings of the Cabinet and decides the agenda for such meetings.
5. Each minister is individually answerable to the Chief Minister for the charge.
6. The Chief Minister coordinates the work of the different ministers. If there is a clash anywhere, he removes it and makes the working of different departments smooth.

## **Who is called a Chief Minister?**

- He is the head of the state government.
- While the governor is the nominal executive of the state government, the person who becomes the chief minister is the real executive of the government
- The real executive is called 'de facto' executive that means, 'in fact, whether by right or not.'

## **How is a Chief Minister appointed?**

- Just like the Prime Minister, provisions of whose appointment are not mentioned in the Indian Constitution, Chief Minister's appointment particulars are not mentioned in the Constitution.
- According to Article 164 in the Indian Constitution, Governor appoints Chief Minister. However, the Governor cannot appoint any random person as the Chief Minister but has to follow a provision.
- A leader of the party that has got the majority share of votes in the assembly elections, is appointed as the Chief Minister of the state.

## **What is the term of Chief Minister's office?**

Aspirants should clearly understand that the term of Chief Minister is not fixed and he holds his office during the pleasure of the governor.

## **What is the main function of the Chief Minister?**

**The CM of the state performs functions in relation to the different categories of people:**

1. In relation to the Council of Ministers
2. In relation to the Governor
3. In relation to the State Legislature

**Other than that, he also performs the following functions:**

1. He chairs the State Planning Board
2. He is a vice-chairperson of the concerned zonal council by rotation, holding that office for a period of one year at a time
3. He is a member of Inter-State Council and National Development Council which are headed by the Prime Minister.

## **In Relation to the Council of Ministers:**

**The Chief Minister is the head of state council of ministers. He performs the following functions:**

1. He recommends to the governor on who to appoint as ministers
2. He designates or reshuffles the portfolios of the ministers
3. He can ask a minister to resign
4. Meeting of the council of ministers is headed by him
5. All activities of the ministers are guided and controlled by the Chief Minister
6. If he resigns, the entire council of ministers collapses.

### **In Relation to the Governor:**

In relation to the governor, the Chief Minister performs the following functions:

1. All the activities, decisions that are taken up by the council of ministers are communicated to the governor by the chief minister
2. To report to the governor, information about the administrative affairs if and when asked by the governor
3. If any minister has decided on any issue, the same has to be reported to the Governor by the Chief Minister when the same has not been considered by the council.
4. He gives his advice to the governor for the appointment of the following persons:
  1. Advocate-General
  2. Chairman of state public service commission
  3. The state election commission, etc.

### **In Relation to the State Legislature:**

He is the leader of the house and holding this position, he performs the following functions:

1. Before a governor prorogues and summons the sessions of the state legislature, the Chief Minister's advice is a must
2. Legislative Assembly can be dissolved at any time on his recommendation to the governor
3. All government policies are announced by him on the floor of the house.

## **Chief Minister and the Governor:**

- The relationship between the Chief Minister of the state and the state's governor has always been in the news.
- The debate on the authority of the respective posts has made the rounds throughout.

**IAS aspirants will understand the dynamics shared by the CM and the Governor by following the details given below:**

Article 163	The governor is advised by the council of ministers which is headed by the Chief Minister.  Note: When the governor acts at his own discretion, no advice is needed by the council
Article 164	Governor appoints Chief Minister and later Chief Minister recommends Governor on the appointment of ministers
Article 167	Chief Minister has to communicate all administrative decisions that are taken up by him and the council of ministers to the governor

## **Who are State Council of Ministers:**

- State Council of Ministers is similar to Central Council of Ministers.
- The state council is headed by the Chief Minister.
- The council comprises ministers appointed by the governor on the recommendation of the CM.

## **How are the Council of Ministers appointed?**

**They are appointed by the governor on the advice of the CM. Governor also appoints a tribal affairs minister for the following states:**

1. Chhattisgarh

2. Jharkhand
3. Madhya Pradesh
4. Odisha

### **Composition of Council of Ministers:**

The size of the council is not mentioned in the Indian Constitution. Chief Minister decides the size and the rank of the ministers as per the requirement in the State Legislature.

### **There are three categories of Council of Ministers:**

1. Cabinet Ministers
2. Ministers of State
3. Deputy Ministers

### **Collective Responsibility:**

The provision of collective responsibility is dealt with by Article 164. The Article mentions that the council of ministers are collectively responsible to the state legislature. (To read more about the important articles in the Indian Constitution, refer to the linked article.) This means that all the ministers own joint responsibility to the legislative assembly for all their acts of omission and commission.

### **Articles related to State Council of Ministers:**

The following articles of the Indian Constitution are important to be read by the aspirants for UPSC 2021. These articles are attached to the council of ministers. Refer to these in the table given below:

Articles	Provision
163	Council of Ministers to aid and advise Governor

164	Other provisions as to Ministers
166	Conduct of business of the Government of a State
167	Duties of Chief Minister as respects the furnishing of information to Governor, etc.

## **Composition and Functions of State Legislature**

- The legislature is the State's law-making body.
- It is the first of the three-state organs.
- It has the power to enact laws as well as run the country.
- According to Article 168 of the Indian Constitution, a state can have a unicameral (which should be the Legislative Assembly) and a bicameral legislature (Legislative Council and Legislative Assembly).
- Every State must have a legislature that includes the Governor. ( Article 168 ) There are two sorts of legislatures: unicameral and bicameral.

### **The State Legislature:**

- The State Legislature is a legislative body that makes laws at the state level.
- A legislative assembly exists in each state of the country.
- The State Legislature is mentioned in Chapter III of Part VI of the Constitution.
- It is made up of the state legislature and the executive.
- Part VI of the Constitution deals with the state legislature's organisation, composition, length, offices, processes, privileges, powers, etc

### **Bicameral and Unicameral States:**

The meaning and importance of Bicameral and Unicameral states are as follows:

### **Unicameral Legislature:**

- A unicameral legislature is one in which just one legislative chamber fulfills all tasks, such as adopting laws, passing budgets, and debating national and international issues.
- Because most nations have a unicameral legislature, it is the most common.
- It is a practical kind of legislative since it makes the law-making process more accessible and decreases the likelihood of obstacles.
- The state's population directly chooses members of the unicameral legislature (Legislative Assembly).

### **Bicameral Legislature:**

- We refer to a bicameral legislature as a state with two independent law-making houses that execute tasks like passing the budget and enacting legislation.
- India has a bicameral legislature at the national level, although states can create their own. Only six states in India, Andhra Pradesh, Bihar, Karnataka, Maharashtra, Telangana, and Uttar Pradesh, have a bicameral legislature.
- On the other hand, a bicameral legislature may not be as effective as a unicameral legislature.

### **Composition of the Houses:**

- The Legislative Assemblies and Legislative Council composition are discussed under Article 170 and Article 171 of the Indian Constitution.

### **State Legislature-Legislative Assembly:**

- Every state in India should have a Legislative Assembly, as per Article 170 of the constitution.
- However, these assemblies should be held by Article 333 of the Indian Constitution. The state's Legislative Assembly can have a maximum of 500 seats and a minimum of 60 constituencies.

- Chosen members would represent these constituencies through a direct election procedure. The makeup of a state's Legislative Assembly might alter in response to demographic changes in that state.
- Article 172 of the Indian Constitution specifies the term or length of the Legislative Assembly.
- The Legislative Assembly should serve for five years. Its period begins on the first day of its first meeting.

### **State Legislature- Legislative Council:**

- Article 171 of the Indian Constitution specifies the composition of the Legislative Council. The Legislative Council's total membership should not exceed one-third of the state Legislative Assembly's full membership.
- The Legislative Council member should be at least 40 years old in any event. There is one exception to Vidhan Parishad's makeup.
- In contrast to the other Legislative Councils, the Legislative Council of Jammu and Kashmir has just 36 members.

### **Duration of Legislative Assembly and Legislative Council:**

Unlike Legislative Assembly, in case of Legislative Council is not subjected to any dissolution and is a permanent body, unless it is abolished by Legislative Assembly and Parliament because of certain procedures.

1. Around 1/3rd of the total members of the Council are elected by electorates which consist of members of local bodies like municipalities.
2. 1/12th of members are elected by electorates comprised of graduates of standing of 3 years from a particular state.
3. 1/12th of the members are elected by electorates which consist of teachers who have taught for at least 3 years, which are not lower than secondary standard.
4. 1/3rd are elected by members of the Legislative Assembly from people who are not Assembly members.



5. The rest of the members are nominated by Governor from persons with knowledge or practical experience in matters which includes science, literature, cooperative movements, and so forth.

### **Qualifications of Members:**

Article 173 of the Indian Constitution specifies the requirements for membership. They are:

- A person must be an Indian citizen.
- A member of the Legislative Assembly must be over the age of 25.
- A person must be above 30 years old to be a member of the Legislative Council.
- he or she should be a registered voter in one of the state's constituencies.

### **Disqualifications of Members:**

**The disqualification of members of the Legislature is addressed in Article 191. The following grounds can be used to disqualify an MLA or MLC:**

- If one occupies a profit-making position in the state or central government.
- If a competent court declares someone to be of unsound mind.
- If you're an undischarged insolvent.
- When a person is no longer a citizen of the nation or when he or she has willingly adopted the citizenship of another country.
- If the law of the Parliament disqualifies one.

### **Sessions of the State Legislature:**

- The Governor has the authority to call these Houses of the State Legislature under Article 174 of the Indian Constitution.
- He or she can summon these bodies to meet at any location and at any moment that he or she deems proper.
- The time interval between these Houses' sessions should not be more than six months.
- The Governor also has the right to prorogue either House or dissolve the Legislative Assembly.

## **Who are the officers of the state legislature?**

### **Speaker and Deputy Speaker:**

- In the Legislative Assembly, the Speaker and Deputy Speaker serve as head or in charge.
- The Indian Constitution, under Article 178, addresses the issue.
- The Speaker and Deputy Speaker should be chosen from the Legislative Assembly.
- It is also stated that if the positions of Speaker and Deputy Speaker are vacant, it is the responsibility of the Legislative Assembly to appoint a new Speaker and Deputy Speaker, respectively.

### **Chairman and Deputy Chairman:**

- The council chooses from its members Chairman and Deputy Chairman.
- Both vacate their offices if they cease to be members of the Council or resign from the membership.
- The Chairman tends to preside over all sittings of the Council and in his absence, Deputy Council presides.

### **Powers of the state legislature:**

- 1. Legislative Powers:** The State Legislature has the authority to enact legislation concerning the State List and the Concurrent List. It has the authority to enact any bill on any subject on the State List, which becomes an Act once signed by the Governor. The Legislative Assembly is in charge of creating laws. The Legislative Assembly introduces most non-money regular measures and plays a vital role in their passage.
- 2. Financial Powers:** The State Legislature has the authority to collect taxes on all of the State List's topics. It is the guardian of the state's money. The state government cannot collect money or levy or collect taxes without the agreement of the State Legislature. The state budget and all other financial policies and programs are only operative if the State Legislature has approved them. In emergencies declared under Articles 352, 356 or 360, however, the state's financial authorities become subject to the Union.

- 3. Control over the Executive:** The State Legislative Assembly has control over the State Council of Ministers. The State Legislative Council has been given a little function. In the State Legislative Assembly, the state Chief Minister is the majority leader. Before the Legislative Assembly, the State Council of Ministers is jointly accountable. The latter can bring the ministry down by passing a vote of no confidence or rejecting a measure, policy, or budget proposed by the Council of Ministers.
- 4. Other Powers:** Other functions are exercised by the State Legislature, notably the Legislative Assembly. Members of the Legislative Assembly choose the President of India (MLAs), elected by the people. They also elect state representatives to the Rajya Sabha. The Union Parliament can only enact specific constitutional revisions if at least half of the state legislatures agree.

### **Functions of the State Legislature:**

- The laws of each state legislature govern the subjects of the State List and the Concurrent List.
- If a state has a unicameral legislature, if it just has a State Legislative Assembly, that legislature exercises all functions.
- Even if the state legislature is bicameral, with the state Legislative Council (Vidhan Parishad) as the upper house and the state Legislative Assembly as the lower body, the latter exercises practically all functions.
- The Legislative Council has a minor and secondary duty.

### **Limitations on the powers of the State Legislature:**

- 1. The President of India's previous approval for introducing specific bills:** Certain bills can only be tabled in a state legislature with the President of India's prior permission.
- 2. Bills reserved by the Governor for President's Assent:** The Governor can reserve specific bills for the President's Assent after the state legislature has enacted them. They become law only once the President has granted such bills.
- 3. Limitations that the Rajya Sabha can impose:** If the Rajya Sabha approves a resolution (supported by a 2/3rd majority of the members present and voting) declaring a state topic named in the resolution as a matter of national interest, the Union Parliament can make laws on the State List for a year.
- 4. Restrictions in the event of a national emergency:** When a national emergency (Article 352) is declared, the Parliament has the authority to adopt legislation on any topic on the

State List. The statute is in effect for the duration of the emergency and six months after it has ended.

5. **Governor's Discretionary Powers:** The Governor of a state's discretionary powers also serve as a constraint on the State Legislature. He is beyond the reach of the State Legislature whenever he acts at his discretion. The governor can dissolve the State Legislative Assembly at his discretion.

### **Legislative Procedure:**

The Legislature Procedure is similar to the Parliamentary Procedure followed in the Parliament.

1. State Legislatures meet at least twice a year and the interval is not more than 6 months.
2. Governor delivers an opening address at the beginning of each new session.
3. Any Bill can be introduced in either House except the Money Bill.
4. Governor can reserve certain Bills for consideration by the President.
5. President is not bounded for giving acceptance of a Bill even though it is passed for the second time in the State Legislature.

## **Organization and Jurisdiction of High Court**

- High Courts are the highest courts in a state. Presently, there are 25 High Courts in India, with some states having a common High Court.
- They are an important part of the judicial system in India and hence, very important from the point of view of Indian polity for the UPSC exam.
- High Courts and their functions, powers, jurisdiction, along with the rules for the appointment of High Court judges are fundamental concepts in the polity section of the IAS syllabus.
- In this article, we present this very vital information in a crisp manner for students to study easily.

### **Powers and Functions of the High Court:**

- The High Court is the highest court in a state in India. Articles 214 to 231 in the Indian Constitution talk about the High Courts, their organisation and powers.

- The Parliament can also provide for the establishment of one High Court for two or more states.
- For instance, Haryana, Punjab and the Union Territory of Chandigarh have a common High Court. The northeastern states also have one common High Court.
- In addition, Tamil Nadu shares a High Court with Puducherry.
- Currently, there are 25 High Courts in India. For a [list of High Courts in India](#), check the linked article.
- The High Courts of Calcutta, Madras and Bombay were established by the Indian High Courts Act 1861.

The functions of the High Court are described in the below section under subsections such as its jurisdiction, powers, role, etc.

### **High Court Jurisdiction:**

**The various kinds of the jurisdiction of the High Court are briefly given below:**

#### **Original Jurisdiction:**

- The High Courts of Calcutta, Bombay and Madras have original jurisdiction in criminal and civil cases arising within these cities.
- An exclusive right enjoyed by these High Courts is that they are entitled to hear civil cases which involve property worth over Rs.20000.
- Regarding Fundamental Rights: They are empowered to issue writs in order to enforce fundamental rights.
- With respect to other cases: All High Courts have original jurisdiction in cases that are related to will, divorce, contempt of court and admiralty.
- Election petitions can be heard by the High Courts.

## **Appellate Jurisdiction:**

- **In civil cases:** an appeal can be made to the High Court against a district court's decision.
- An appeal can also be made from the subordinate court directly if the dispute involves a value higher than Rs. 5000/- or on a question of fact or law.
- **In criminal cases:** it extends to cases decided by Sessions and Additional Sessions Judges.
  - If the sessions judge has awarded imprisonment for 7 years or more.
  - If the sessions judge has awarded capital punishment.
- The jurisdiction of the High Court extends to all cases under the State or federal laws.
- In constitutional cases: if the High Court certifies that a case involves a substantial question of law.

## **High Court Powers:**

Apart from the above, the High Courts have several functions and powers which are described below.

### **As a Court of Record:**

- High Courts are also Courts of Record (like the Supreme Court).
- The records of the judgements of the High Courts can be used by subordinate courts for deciding cases.
- All High Courts have the power to punish all cases of contempt by any person or institution.

### **Administrative Powers:**

1. It superintends and controls all the subordinate courts.
2. It can ask for details of proceedings from subordinate courts.
3. It issues rules regarding the working of the subordinate courts.

4. It can transfer any case from one court to another and can also transfer the case to itself and decide the same.
5. It can enquire into the records or other connected documents of any subordinate court.
6. It can appoint its administration staff and determine their salaries and allowances, and conditions of service.

### **Power of Judicial Review:**

High Courts have the power of judicial review. They have the power to declare any law or ordinance unconstitutional if it is found to be against the Indian Constitution.

### **Power of Certification:**

A High Court alone can certify the cases fit for appeal before the Supreme Court.

### **High Court Autonomy:**

**The independence of the High Courts can be corroborated by the points given below:**

1. **Appointment of Judges:** The appointment of judges of the High Courts lies within the judiciary itself and is not connected to the legislature or the executive.
2. **Tenure of the Judges:** High Court judges enjoy the security of tenure till the age of retirement, which is 62 years. A High Court cannot be removed except by an address of the President.
3. **Salaries and allowances:** The High Court judges enjoy good salaries, perks and allowances and these cannot be changed to their disadvantage except in case of a financial emergency. The expenses of the High Court are charged on the Consolidated Fund of the State, which is not subject to vote in the state legislature.
4. **Powers:** The Parliament and the state legislature cannot cut the powers and jurisdiction of the High Court as guaranteed by the Constitution.
5. **Conduct of judges:** Unless a motion of impeachment has been moved, the conduct of the High Court judges cannot be discussed in the Parliament.
6. **Retirement:** After retirement, High Court judges cannot hold an office of emolument under the Government of India or that of a state. There is an exception to this clause,

however, when, with the consent of the Chief Justice of India, retired judges can be nominated to a temporary office, and in the situation of emergencies.

### **Structure of Courts In India:**

- An organ of government that deals with the administration of justice according to law is called the judiciary.
- It includes courts, judges, etc.
- The work done by the judiciary involves dispute resolution, judicial review, upholding the law, and enforcement of fundamental rights.
- It resolves disputes among citizens, between citizens and government, and between two governments central or state.
- It is the final interpreter of the constitution and can override the Parliament. Indian judiciary is single, integrated as well as independent as established by the Indian constitution.

### **Independent judiciary:**

- Independent Judiciary is the idea that the legal executive should be autonomous from different parts of the government.
- That means, courts must not be dependent upon ill-advised impact from different parts of government or from private or sectarian interests.
- Independence of the judiciary is very essential for the effective discharge of its functions and duties.
- We have an independent judiciary to avoid interference from other organs of government in its function of delivering justice and function without fear or favour.
- This ensures that the justice served is impartial.

### **Independent judiciary in India:**



**Indian Constitution has ensured the independence of the judiciary through the following provisions:**

- Mode of appointment- Legislature is not involved in the appointment of judges. This is done to ensure that judicial appointments are not biased based on political or practical considerations.
- Security of tenure- Judges can be removed by President or governor as per the manner prescribed in the constitution.
- Fixed service conditions: Conditions of service remain the same during their tenure.
- It is prohibited by the constitution to discuss in Parliament or State legislature the conduct of judges with respect to the discharge of duties.
- The retired Supreme court judges are banned from further service in any court or authority to remove biases of judgment while in service.
- Any person can be punished by the court for their contempt.
- Parliament can only increase its jurisdiction but cannot curtail it.
- Separation of Judiciary from Executive is provided by Constitution.
- Judiciary is not dependent financially on legislature or executive.

**Structure of Indian Judiciary:**

- Indian judiciary is integrated and has 3 levels.
- The Supreme Court stands at the top as head of all courts which is followed by state High courts, District courts, other subordinate courts etc.
- Both central and state laws are enforced by a single system of courts.

**Supreme Court:**

- It is a federal court, the highest court of appeal, the guarantor of fundamental rights, and a guardian of the constitution.
- There is only one Supreme Court.
- Its decisions are binding on all other courts.

**The jurisdiction and powers of the Supreme court include the following:**

1. **Original jurisdiction:** Can hear cases in the first instance.

2. **Writ jurisdiction:** Guarantor of fundamental rights by issuing writs.
3. **Appellate jurisdiction:** Can hear appeals against judgments of lower courts
4. **Advisory jurisdiction:** Can provide an opinion to President on any matter.
5. **A court of record:** Records all judgments and proceedings and can punish for contempt of court
6. **Power of judicial review:** Can review its own judgment or judgment of lower courts.
7. **Interpreter of constitution:** It is the final interpreter of the constitution.

### **High Court:**

- Each state has a high court and other subordinate courts.
- It functions and operates below the Supreme Court.
- There are at present 25 high courts for different states in India.
- There can be a common high court for 2 states or UTs.
- High courts of each principality has a chief justice and other judges.
- It has same powers and jurisdictions as of a Supreme court on its subordinate courts.

### **District court/other subordinate courts:**

- They are subordinate to the State high courts.
- The district judges are appointed by the Governor.
- The structure of district and other subordinate courts is different for different states.
- District judge is the highest judicial authority for the state.
- Other courts include family courts, gram nyayalayas etc.

### **Three tiers of civil and criminal courts are present below the high court:**

- **Civil courts:** Deal with civil wrongs done by individuals against each other's and entities. They include property disputes, contract breaches, divorce cases etc., Civil courts are governed by Code of Civil Procedure (CPC).
- **Criminal courts:** Deal with crimes committed by individuals against society as per the Criminal law. Criminal courts derive their power from Code of Criminal Procedure (CrPC). In case of Criminal law complaint is to be first registered with police.

- **Lok Adalat:** Pending cases in a court or cases at pre litigation stage are settled in Lok Adalat's amicably. It is also called as "People's court". In order to reduce the burden of the huge backlog cases and for speedy trial Lok Adalat's have been constituted. They provide alternate resolution for expeditious and inexpensive justice. A Lok Adalat usually consist of a judicial officer, a lawyer and a social worker. The award of a Lok Adalat has the status of a decree of civil court and is non-appealable.

### **Facts Related to Total High Courts in India:**

- The oldest High Court in India is the Calcutta High Court, which was established in 1862.
- Similar to this, the Madras and Bombay High Courts were also founded in the same year.
- On the other hand, the Telangana Court and Andhra Pradesh High Court, both founded in 2019, are the most recent additions.
- The Chief Justice and the number of judges on each High Court are decided by the President of India.
- The three Chartered High Courts in India are the Bombay, Madras, and Calcutta High Courts, denoting their historical importance.
- The Madras Law Journal was the first in India devoted to reporting court decisions, and it was founded by the Madras High Court in 1891.

### **Who administers the Oath of High court Judges?**

- The Governor of the state in question administers the oath to the judge of a high court.
- After the Supreme Court, the High Court is India's second-largest judicial authority.
- The high court performs a number of crucial tasks, such as counseling the Indian President on appointments made by the Chief Justice of India.
- The high court is presided over by the Chief Justice of India.
- The oldest high court in India is the one in Calcutta.
- A high court judge is chosen by the president of India after consulting with the chief justice and state governor.
- The Governor is the state's main executive.
- However, he/she, like the President, is simply a ceremonial head of state.
- The Governor also works as a representative of the Union Government.
- As a result, the Governor's office fulfills a dual function.

- Each state normally has its own governor, but the 7th Constitutional Amendment Act of 1956 made it simpler to nominate the same person to serve as Governor of two or more states.
- The Governor appoints the Attorney General, as well as the chairman and members of the State Public Service Commission.
- He/she has the ability to recommend to the President that the state declare a constitutional emergency.
- During the President's administration in the State, the Governor has significant administrative powers as an agent of the President.
- The chief judge of the high court is ranked fourteenth in their own country and seventeenth worldwide.
- The number of high courts judges is determined by dividing the average institute of their major cases over the previous five years by the national average.
- All courts, including the high court, are bound by the rulings and directives of the supreme court.