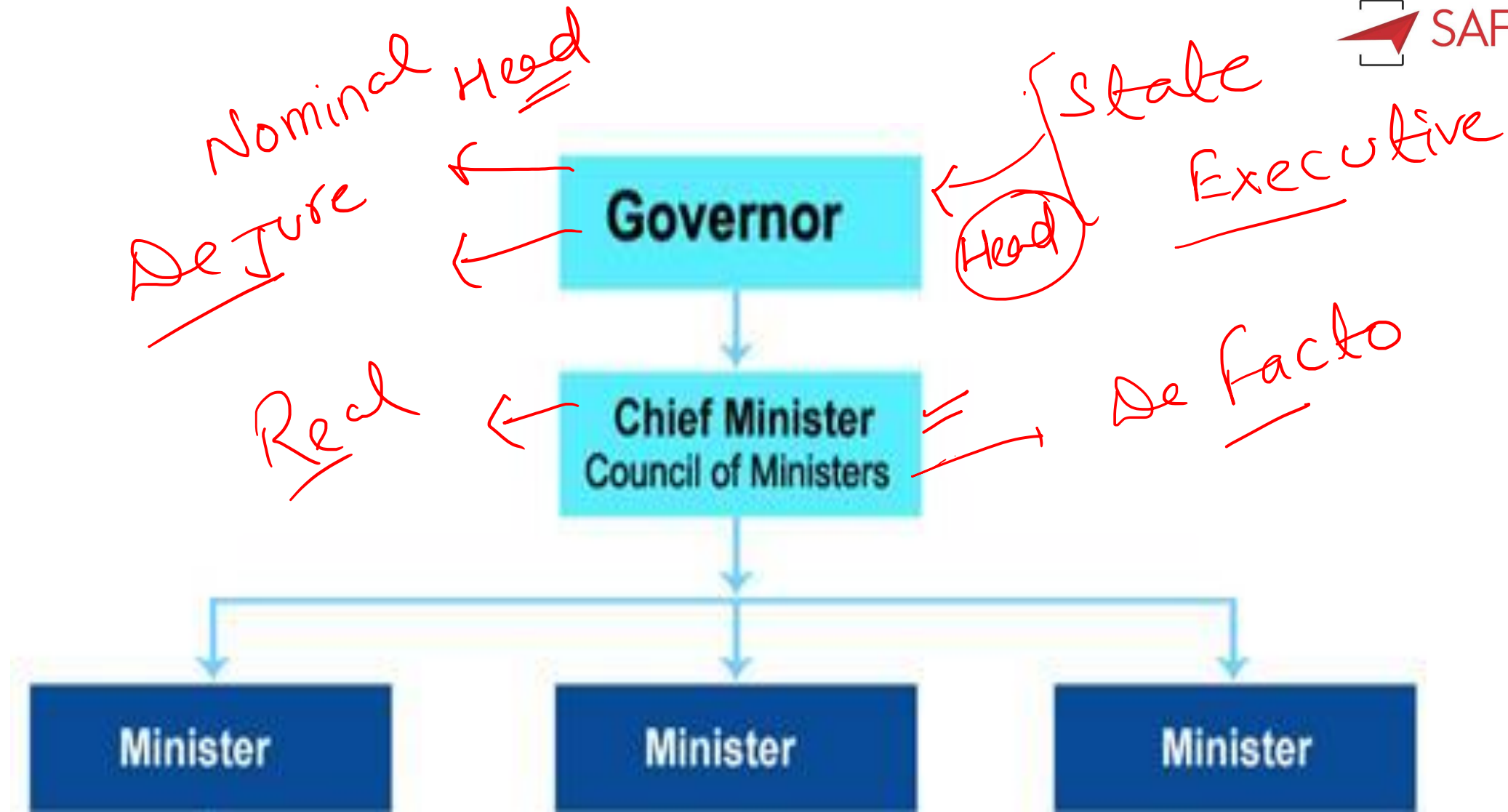






The Governor

Appointment, Functions and Powers



Articles (153 to 167) in Part ⁶VI of the Constitution deal with the state executive.

Appointment of Governor

Holds office during pleasure of Prez.

The governor is neither directly elected by the people nor indirectly elected by a specially constituted electoral college as is the case with the president.

He is appointed by the president by warrant under his hand and seal. In a way, he is a nominee of the Central government.

★
एकलक्ष
संघीय
Comm.

But, as held by the Supreme Court in 1979, the office of governor of a state is not an employment under the Central government.

It is an independent constitutional office and is not under the control of or subordinate to the Central government.

Term of Governor's Office

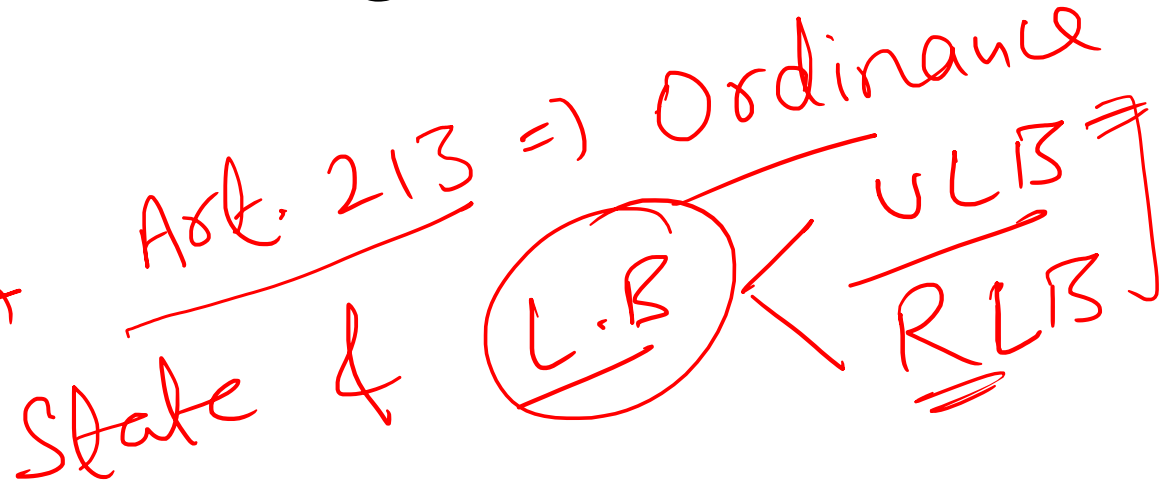
A governor holds office for a term of five years from the date on which he enters upon his office.

However, this term of five years is subject to the pleasure of the President. Further, he can resign at any time by addressing a resignation letter to the President.

The powers and functions of the governor can be studied under the following heads:

1. Executive powers.)
2. Legislative powers.)
3. Financial powers.)
4. Judicial powers.)

Art. 213 ⇒ Ordinance
State & L.B. ULB
RLB



1. Executive powers.

1.

He appoints the chief minister and other ministers. They also hold office during his pleasure.

There should be a Tribal Welfare minister in the states of Chattisgarh, Jharkhand, Madhya Pradesh and Odisha appointed by him.



2.

He appoints the advocate general of a state and determines his remuneration. The advocate general holds office during the pleasure of the governor.

3.

He appoints the state election commissioner and determines his conditions of service and tenure of office. However, the state election commissioner can be removed only in like manner and on the like grounds as a judge of a high court.

Local Bodies
of
Elec.

4.

eg. → UP PCS
He appoints the chairman and members of the state public service commission. However, they can be removed only by the president and not by a governor.

2. Legislative powers.

A governor is an integral part of the state legislature. In that capacity, he has the following legislative powers and functions:

1. He can summon or prorogue the state legislature and dissolve the state legislative assembly.

Adjourn
Speaker

2. He can address the state legislature at the commencement of the first session after each general election and the first session of each year.

6

~~3~~

3. He nominates one-sixth of the members of the state legislative council from amongst persons having special knowledge or practical experience in literature, science, art, cooperative movement and social service.

Prez ⇒
(12)

4. He can nominate one member to the state legislature assembly from the Anglo-Indian Community.

— Art. 213

5. He can promulgate ordinances when the state legislature is not in session.

These ordinances must be approved by the state legislature within six weeks from its reassembly.

Financial Powers

The financial powers and functions of the governor are: 1. He sees that the Annual Financial Statement (state budget) is laid before the state legislature.

2. Money bills can be introduced in the state legislature only with his prior recommendation.

3. No demand for a grant can be made except on his recommendation.

4. He can make advances out of the Contingency Fund of the state to meet any unforeseen expenditure.

5. He constitutes a finance commission after every five years to review the financial position of the panchayats and the municipalities.

Judicial Powers

The judicial powers and functions of the governor are:

1.

He can grant pardons, reprieves, respites and remissions of punishment or suspend, remit and commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the state extends.



2.

He is consulted by the president while appointing the judges of the concerned state high court.

153.	Governors of states
154.	Executive power of state ✓✓
155.	Appointment of Governor
156.	Term of office of Governor
157.	Qualifications for appointment as Governor
158.	Conditions of Governor's office
159.	Oath or affirmation by the Governor
160.	Discharge of the functions of the Governor in certain contingencies

min Age = 35 yrs

161.	Power of the <u>Governor to grant pardons and others</u>
162.	Extent of executive power of state
163.	Council of ministers to aid and advise the Governor
164.	Other provisions as to ministers like appointments, term, salaries, and others
165.	Advocate-General for the state
166.	Conduct of business of the government of a state
167.	Duties of the Chief Minister regarding furnishing of information to the Governor, and so on

174.	Sessions of the state legislature, prorogation and dissolution
175.	Right of the Governor to address and send messages to the house or houses of state legislature
176.	Special address by the Governor
200.	Assent to bills (i.e. assent of the Governor to the bills passed by the state legislature)
201.	Bills reserved by the Governor for consideration of the President
213.	Power of Governor to promulgate ordinances

<u>217.</u>	Governor being consulted by the President in the matter of the appointments of the judges of the High Courts
<u>233.</u>	Appointment of <u>district judges</u> by the Governor
234.	Appointments of persons (other than district judges) to the judicial service of the state by the Governor.

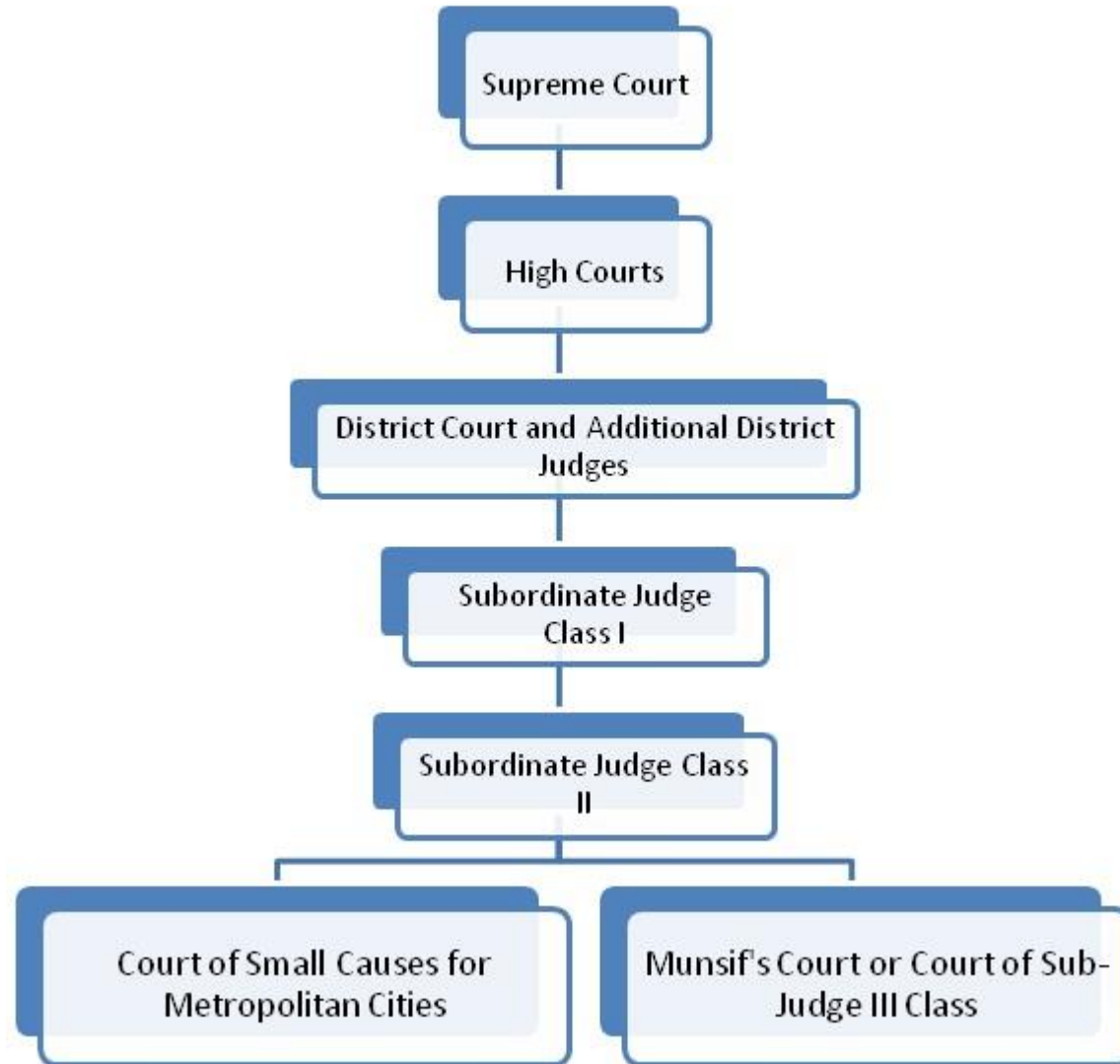
chief min ✓✓

Article No.	Subject-matter
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.



Supreme Court





The Supreme Court of India was inaugurated on January 28, 1950.

It succeeded the Federal Court of India, established under the Government of India Act of 1935. However, the jurisdiction of the Supreme Court is greater than that of its predecessor.

This is because, the Supreme Court has replaced the British Privy Council as the highest court of appeal.

Morris Gyer

(1)

124.	Establishment and Constitution of Supreme Court
124A.	National Judicial Appointments Commission
124B.	Functions of Commission
124C.	Power of Parliament to make law
125.	Salaries, etc., of Judges
126.	Appointment of acting Chief Justice
127.	Appointment of <u>ad hoc</u> Judges
128.	Attendance of retired Judges at sittings of the Supreme Court

X Repeal
 अधिनियम

129.	Supreme Court to be a court of record
130.	Seat of Supreme Court
131.	Original jurisdiction of the Supreme Court
131A.	Exclusive jurisdiction of the Supreme Court in regard to questions as to constitutional validity of Central Laws (Repealed)
132.	Appellate jurisdiction of Supreme Court in appeals from High Courts in certain cases
133.	Appellate jurisdiction of Supreme Court in appeals from High Courts in regard to civil matters

134.	Appellate jurisdiction of Supreme Court in regard to criminal matters
134A.	Certificate for appeal to the Supreme Court
135.	Jurisdiction and powers of the Federal Court under existing law to be exercisable by the Supreme Court
136.	<u>Special leave to appeal by the Supreme Court</u>
137.	<u>Review of judgments or orders by the Supreme Court</u>
138.	Enlargement of the jurisdiction of the Supreme Court

SLP

139.	Conferment on the Supreme Court of powers to issue certain writs
139A.	Transfer of certain cases
140.	Ancillary powers of Supreme Court
141.	Law declared by Supreme Court to be binding on all courts
142.	Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc.
143.	Power of President to consult Supreme Court

144.	Civil and judicial authorities to act in aid of the Supreme Court
144A.	Special provisions as to disposal of questions relating to constitutional validity of laws (Repealed)
145.	Rules of court, etc.
146.	Officers and servants and the expenses of the Supreme Court
147.	Interpretation

- There are currently 32 judges (including the Chief Justice of India) and maximum possible strength is **34**.

33 + 1

- Originally, the strength of the Supreme Court was fixed at eight (one chief justice and seven other judges).

Ist CJI ⇒

H.J. Kania



Appointment of Judges

The judges of the Supreme Court are appointed by the president. The chief justice is appointed by the president after consultation with such judges of the Supreme Court and high courts as he deems necessary.

A. N. Ray
↳ by ignoring 3 Senior Judges

Mr. Beg →]

The other judges are appointed by president after consultation with the chief justice and such other judges of the Supreme Court and the high courts as he deems necessary.

The consultation with the chief justice is obligatory in the case of appointment of a judge other than Chief justice.

Controversy over Consultation The Supreme Court has given different interpretation of the word 'consultation' in the above provision.

In the **(First Judges case (1982))**, the Court held that consultation does not mean concurrence and it only implies exchange of views.

But, in the **Second Judges case (1993)**, the Court reversed its earlier ruling and changed the meaning of the word consultation to concurrence.

Hence, it ruled that the advice tendered by the Chief Justice of India is binding on the President in the matters of appointment of the judges of the Supreme Court.



But, the Chief Justice would tender his advice on the matter after consulting two of his seniormost colleagues.

Similarly, in the Third Judges case (1998), the Court opined that the consultation process to be adopted by the Chief justice of India requires 'consultation of plurality judges'.


$$1+3 = 4 \Rightarrow 3:1$$

The sole opinion of the chief justice of India does not constitute the consultation process.

He should consult a collegium of four seniormost judges of the Supreme Court and even if two judges give an adverse opinion, he should not send the recommendation to the government.

National Judicial Appointments Commission

The 99th Constitutional Amendment Act of 2014 and the National Judicial Appointments Commission Act of 2014 have replaced the collegium system of appointing judges to the Supreme Court and High Courts with a new body called the National Judicial Appointments Commission (NJAC).

→ J.S. Khanna →

However, in 2015, the Supreme Court has declared both the 99th Constitutional Amendment as well as the NJAC Act as unconstitutional and void.

Consequently, the earlier collegium system became operative again.

NJAC ✓
unconst.

This verdict was delivered by the Supreme Court in the Fourth Judges case^{2a} (2015). The court opined that the new system (i.e., NJAC) would affect the independence of the judiciary.

Qualifications of Judges

A person to be appointed as a judge of the Supreme Court should have the following qualifications:

- 1. He should be a citizen of India.**
- 2. (a) He should have been a judge of a High Court (or high courts in succession) for five years; or (b) He should have been an advocate of a High Court (or High Courts in succession) for ten years;**

or (c) He should be a distinguished jurist in the opinion of the president.

From the above, it is clear that the Constitution has not prescribed a minimum age for appointment as a judge of the Supreme Court.

Tenure of Judges

The Constitution has not fixed the tenure of a judge of the Supreme Court. However, it makes the following three provisions in this regard:

1. He holds office until he attains the age of 65 years. Any question regarding his age is to be determined by such authority and in such manner as provided by Parliament.

2. He can resign his office by writing to the president.

3. He can be removed from his office by the President on the recommendation of the Parliament.

Removal = incapacity
proved misbehaviour