

## UNIT- 03-(COI)

### CONSTITUTIONAL P R O F I L E OF STATE ADMINISTRATION

#### INTRODUCTION

The very first Article of our Constitution says, “India, that is ‘Bharat’, shall be a Union of states.” The word ‘Union’ has been used to mean ‘Federation’ in the US Constitution. In our Constitution, however, the Union is not a Federation of the type set up by the US Constitution. The Indian Constitution has several features of a Federation like the dual government; distribution of powers between federal and state governments, supremacy of the Constitution and Final authority of courts to interpret the Constitution. On the other hand, there are several unitary features like a unified judicial system; integrated machinery for election, accounts and audit; power of superintendence of union government over state government in emergencies and to some extent even in normal times; single citizenship, etc. Due to these features, our Constitution lays down a quasi-federal polity. Granville Austin has on the other hand called our Federation a ‘Cooperative Federalism’ due to the need for close cooperation between the Union government, and the state governments. The purpose here is not to discuss in detail the nature of Indian Federation, but to put the study of state administration in proper context. It is, therefore, enough for us to know that our Constitution envisages a two-tier structure of **governance** — one at the Union or Central level and the other at the state level. The powers and functions of the Central or Union government and the state governments are specified in the Constitution. The Union and the state governments function independently in their own spheres. Of course, there is an area of overlapping responsibility and there are certain powers of superintendence

#### POWERS OF THE STATE GOVERNMENTS

As already mentioned, the Union government and state governments derive their powers directly from the Constitution. The Constitution has adopted a three-fold distribution of legislative powers between the Union and the states (Article 246). Schedule VII of the Constitution enumerates the subjects into three lists. List I or the Union List consists of the subjects over which the Union has exclusive powers of legislation. Similarly, List II or the State List comprises subjects over which the state has exclusive powers of legislation. There is yet another List (List III) known as the Concurrent List that comprises subjects over which both the Union and states have powers to legislate. The residual powers are vested in the Union. We would now briefly discuss List I and List III, which enumerate the subjects over which the states have jurisdiction either exclusively or concurrently with the Union.

##### State List

The State List comprises 61 items over which states have exclusive jurisdiction. Some of the important ones are — Public Order and Police, Agriculture, Forests, Fisheries, Public Health, Local Government, etc. These are subjects of maximum concern to the people which can be better dealt with at the state level. These subjects are generally under the exclusive jurisdiction of the states, but under the following circumstances, the Parliament can legislate on these matters.

- i) In national interest, Council of States by a resolution of 2/3" of its members present and voting may authorize the Parliament to legislate on a state subject. Such authorization may be for one year at a time, but can be renewed by a fresh resolution;
- ii) Under a proclamation of emergency, the Parliament may legislate on a state subject;
- iii) With the consent of two or more states, the Parliament may legislate on a state subject with respect to the consenting states;
- iv) Parliament has powers to legislate with reference to any subject (including a state subject) for the purpose of implementing treaties or international agreements and conventions; and
- v) When a proclamation is issued by the President on the failure of Constitutional machinery in any state, he may declare that the powers of the state legislature shall be exercised by or under the authority of Parliament.

### **Concurrent List**

The Concurrent List comprises 47 items over which the Union and state legislatures have concurrent jurisdiction. The important ones are: Criminal Law and Procedure, Marriage, Trusts, Civil Procedure, Insurance, Social and Economic planning, etc.

While the Union and states can legislate on any of the subjects in the Concurrent List, predominance is given to the Union Legislature. It means that in case of repugnancy between the Union and a state law relating to the same subject, the former prevails. If, however, the state law was reserved for the assent of the President and has received such assent, the state law may prevail notwithstanding such repugnancy, but it would still be competent for the Parliament to override such state law by subsequent legislation.

Any dispute about the interpretation of the entries in the three lists is to be decided by the Courts. Following principles have been followed in such interpretation:

- i) In case of overlapping of a subject between the three lists, predominance is to 'be given to the Union Legislature;
- ii) Each entry is given the widest importance that its words are capable of,
- iii) In order to determine whether a particular enactment falls under one entry or another, its 'pith and substance' is considered.

### **Distribution of Executive Power**

In general, the distribution of executive powers follows the distribution of the legislative powers. It means that the state government has executive powers in respect of subjects in the State List.

However, the executive power in respect of subjects in the Concurrent List ordinarily remains with the state governments except in the following cases:

- i) Where a law of Parliament relating to such subjects vests some executive functions in the Union, e.g., in Industrial Disputes Act, 1947.
- ii) Where provisions of Constitution itself vest some executive functions upon the Union, e.g., implementation of an international treaty or obligation.

Moreover, the Union has the power to give directions to the state governments in the exercise of their executive powers in the following cases:

**i) In Normal Times, the State Governments have to ensure:**

- Compliance with Union laws
- Exercise of executive power of the state does not interfere with the exercise of the executive power of the Union
- Construction and maintenance of the means of communication of national or military importance by the state
- Protection of railways in the state
- Implementation of schemes for the welfare of Scheduled Castes and Scheduled Tribes
- The administration of a state is carried on in accordance with the provisions of the Constitution.

**ii) In Emergencies**

- The state government functions under the complete control of the Union Government
- The President may assume to himself all or any executive powers of the state on proclamation of failure of Constitutional machinery in a state.

**iii) During a Financial Emergency**

- The President can give directions to the state government to observe canons of financial propriety
- The President may reduce salaries and allowances of employees
- Money bills and other financial bills could to be reserved for consideration of the President.

## **ROLE OF THE GOVERNOR**

Our Constitution provides for the Parliamentary form of government at the Union as well as the state levels. The Governor is the Constitutional head of the state and acts on the advice of the Council of Ministers headed by the Chief Minister. He is appointed by the President for a term of five years and holds office during his pleasure. He can be reappointed after his tenure as Governor of the same state or of another state.

According to the Constitution, the Governor has many executive, legislative, judicial and emergency powers. For example, the Governor appoints the Chief Minister and on his advice the Council of Ministers. He makes many other appointments like those of members of the State Public Service Commission, Advocate General, Senior Civil Servant, etc. In fact, the entire executive work of the state is carried on in his name.

The Governor is a part of the State Legislature. He has a right of addressing and sending messages to and of summoning, proroguing the State Legislature and dissolving the Lower House. All the bills passed by the Legislature have to be assented to by him before becoming the law. He can withhold his assent to the Bill passed by the Legislature and send it back for reconsideration. If it is

again passed with or without modification, the Governor has to give his assent. He may also reserve any Bill passed by the State Legislature for the assent of the President. The Governor may also issue an Ordinance when the legislature is not in session.

The Governor even has the power to grant pardon, reprieve, respite, and remission of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law related to a matter to which the executive power of the state extends.

As far as the emergency powers of the Governor are concerned, whenever the Governor is satisfied that a situation has arisen in his state whereby the administration of the state cannot be carried on in accordance with the provisions of the Constitution, he can report the fact to the President. On receipt of such a report, the President may assume to himself the powers of the state government and may reserve for the Parliament the powers of the State Legislature (Article 356).

### **Exercise of Discretion by the Governor**

It has already been pointed out that the Governor has to exercise his powers on the advice of the Council of Ministers. He does not, therefore, have much discretion in the exercise of his powers as long as a stable Ministry enjoying the confidence of the Assembly is in office. However, this is not always the case. The Governor may then be called upon to exercise his discretion. It is this exercise of discretion that has made the Governor's office the most controversial Constitutional office of the country. Major controversies have arisen in the following types of cases in the past:

#### **i) Appointment of Chief Ministers**

The Governor appoints the Chief Minister and on his advice the Council of Ministers. When a party with absolute majority elects a leader, the Governor has no choice but to appoint him the Chief Minister and invite him to form the government. Problems arise when no political party has an absolute majority in the legislature. Here the discretion of the Governor comes into play. For example, in 1952 the Congress Party was the largest single party in Madras legislature, but did not have an absolute majority. Still the Governor Mr. Sri Prakash invited Mr. C. Rajgopalachari to form the government as the leader of the largest single party. This principle was, however, not followed in West Bengal in 1970. The CPM led by Mr. Jyoti Basu was the largest single party in the West Bengal Assembly. The Governor Mr. S.S. Dhavan asked Mr. Basu to prove his majority. Mr. Basu insisted on calling the Legislative Assembly and proving his majority on the floor of the House. The Governor ultimately did not invite him to form the government. The opponents of Congress criticised this on the ground that this was done at the behest of the Congress government which was in Office at the Centre at that time. "thus, different criteria have been followed by different Governors even in similar circumstances.

#### **ii) Dismissal of a Ministry**

A Chief Minister and his Ministry hold office during the pleasure of the Governor, which is not subject to any scrutiny. However, the Governor has to exercise his discretion judiciously. There is a general feeling that the Governors have not done so. For example, the Governor of West Bengal, Mr. Dharma Veera dismissed the Ajoy Mukherjee Ministry in 1967 on the grounds that he did not call a meeting of the Assembly within the time specified by the Governor for proving the majority. The action was severely criticised by many jurists who felt that it was a wrong convention to establish. It would have been much better to establish the convention that a Governor can call a meeting of the Assembly to test the majority of the government, in case the Chief Minister refuses to do so. The opposition interpreted it as a deliberate

attempt on the part of the Governor for helping the ruling party at the Centre. According to them, Governor's pleasure is subject to the Ministry enjoying the confidence of the Assembly, which alone should decide the fate of a Ministry.

### **iii) Dissolution of the Assembly**

In British Parliamentary Democracy, the king is guided by the advice of the Prime Minister in the matter of dissolution of the House of Commons. Likewise, the Governor should be guided by the advice of the Chief Minister in the matter of dissolution of the Assembly. Unfortunately, such a convention has not been established in India. For example, in 1967 the Chief Minister of Punjab, Mr. Gurnam Singh advised the Governor to dissolve the Assembly. His advice was not accepted by the Governor on the grounds that as long as it is possible to form a government, the Assembly should not be dissolved. Same thing happened to the advice of Mr. Charan Singh when he advised the Governor of U.P. in 1968 to dissolve the Assembly. In **2003**, the Chief Minister of U.P. Ms. Mayawati advised the Governor to dissolve the Assembly but the Governor did not accept the advice on the ground that party in power had lost the majority. The opposition parties have alleged that here again the Governors have tended to act according to the wishes of the Central Government.

### **iv) Use of Emergency Powers**

It has also been alleged that the Governors have not used their discretion judiciously in advising the President for using his emergency powers under Article 356 of the Constitution. In 1959 itself, the Governor of Kerala reported to the President that due to failure of law and order, the government of the state could not be carried on according to the provisions of the Constitution. The first non-Congress state government of the country was thrown out by the President on the basis of this report, which was severely criticized by all sections of the Opposition. In 1984, the Governors of I&K and Andhra Pradesh verified the numerical support of the ruling (non-Congress) parties in the Assembly and hurriedly advised the dismissal of the state governments on the ground that in the absence of stable majorities, the governments of these states could not be carried on according to the Constitution. In either case, the majority of the government was not tested on the floor of the Assembly. Moreover, in case of Andhra Pradesh even the arithmetic of numbers proved to be incorrect. In these cases, there were open allegations also that they Governors had tried to reduce the state governments to a minority.

### **General Remarks**

Thus, it appears that our Constitution envisages a dual role for the Governor. He is a Constitutional head of the state government as well as a representative of the President. The mode of appointment of the Governor and his holding office during the pleasure of the President has tended to emphasize the second role of the Governor, i.e., his role as a representative of the President. Since the President has to act on the advice of the Council of Ministers headed by the Prime Minister, the Governor has to indirectly act according to the wishes of the leader of the ruling party at the Centre. This has been resented by the opposition parties and has also been criticized by eminent jurists. It has been argued that provisions regarding the appointment and termination of the Governor have made him a tool of the ruling party at the Centre and not an impartial head of the state.

On the other side, it has been argued that the mode of appointment and termination of the Governor was deliberately adopted by the makers of Constitution, after a good deal of debate, with a view to guard against the fissiparous tendencies present in our polity. However, it is said that by appointing pliable

Governors, the ruling There have been instances where Governors have been removed due to a change of guard at the Centre. The political parties do not find it difficult to remove the Governors that belong to opposition parties in the **states**.

## **STATE LEGISLATURE**

Legislation provides the framework for policy formulation and arms the government with powers to implement the policies. At the state level, the function of providing the necessary legislative framework is performed by State Legislature. Our Constitution provides that every state shall have at least one house, viz., the Legislative Assembly comprising 60 to 500 members chosen by direct election on the basis of adult suffrage from territorial constituencies. In addition, any state can create a second house, viz., Legislative Council if it so desires. This can be done by a resolution of the Assembly passed by a special majority (i.e., a majority of total membership of the Assembly not being less than two-thirds of the members actually present and voting) followed by an Act of Parliament. By the same process, an existing Legislative Council can be abolished also. Andhra Pradesh, West Bengal and Punjab have followed this procedure to abolish their Legislative Council. At present, only Bihar, Maharashtra, Karnataka, U.P. and J&K have two houses. Whenever constituted, the membership of the Council cannot be more than 1/3 of the membership of the Assembly, but not less than 40. The composition of Council membership is as follows:

- 1/3 elected by members of local bodies
- 1/12 elected by Electorate of graduates of 3 years' standing
- 1/12 elected by teachers of 3 years' experience in secondary school or above
- 1/3 elected by MLAs from non-members of the Assembly
- 1/6 nominated by the Governor

Election is to be in accordance with the principle of proportional representation by means of the single transferable vote. Duration of the Assembly is five years unless dissolved earlier by the Governor. Its term may be extended by Parliament during Emergency up to a period of six months beyond the expiry of the proclamation of Emergency by the President. The Legislative Council is a continuing or permanent body with 1/3 of its members retiring every second year.

## **Legislative Procedure in a Bicameral Legislature**

### **Regarding a Money Bill**

- i) A Money Bill can originate only in the Legislative Assembly and not in the Council
- ii) The Council cannot reject or modify this Bill passed by the Assembly. It can only make recommendations, which may or may not be accepted by the Assembly. The Bill as passed by the Assembly with or without modification is presented to the Governor for assent. If the Council does not return the Bill within 14 days, it can straightaway be presented to the Governor for his assent

Thus, the will of the Assembly ultimately prevails. The Council can at best delay its passage.

### **Regarding any Bill other than a Money Bill**

- i) Such a Bill can originate in either House

ii) If a Bill is passed by the Assembly, the Council may reject the Bill, modify it; or may not pass it for three months. If the Bill is again passed by the Assembly with or without modification, the Council, on its second journey, may only delay it by one month

iii) If a Bill originates in the Council and is rejected by the Assembly, the matter

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

### **Governor's Veto**

When a Bill, passed by State Legislature, is presented to the Governor for his assent:

- i) The Governor may assent to the Bill, in which case it would become law
- ii) He may withhold assent, in which case it does not become law
- iii) He may, in case of a Bill other than a Money Bill, return the Bill with a message
- iv) The Governor may reserve a Bill for the consideration of the President.

Options (i) and (ii) do not involve use of discretion by the Governor. He may not withhold assent without the advice of the Council of Ministers. However, in case of options (iii) and (iv), the Governor may act as per his discretion. When a Bill is returned with a message, the legislature may again pass the Bill with or without modifications. The Governor then has no option but to signify his assent.

Option (iv), however, gives the Governor and the President a real veto on a Bill passed by the State Legislature. When a Bill is reserved for the assent of the President, he may either declare his assent; withhold his assent or return the Bill to the State Legislature with a message. The State Legislature has to reconsider the Bill within six months. Even if the Bill is passed again with or without modifications, it is not obligatory on the part of the President to signify his assent.

The opposition parties have criticised that this provision of veto substantially detracts from the autonomy of the state governments. The Governor, as an agent of the President may interfere with the legislative powers of the state.

### **Governor's Power to Issue Ordinances**

When the Legislature is not in session, the Governor can issue Ordinances, which have the force of law. Any Ordinance so issued by the Governor has to be placed before the Legislature whenever it is convened and ceases to have an effect at the expiration of six weeks from the date of reassembly unless disapproved earlier. The Governor's Ordinance - making power is co-extensive with the legislative powers of the State Legislature and is subject to the same limitations pertaining to obtaining previous sanction from the President.

### **Legislative Control over Administration**

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

### **Assembly Questions**

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

### **Discussions**

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

### **Financial Control by Budget**

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

### **Post-expenditure Control**

The State Legislature also scrutinizes the expenditure incurred by the government through the device of audit. Our Constitution provides for an integrated accounts and audit system. The Comptroller and Auditor General of India (CAG) gets the accounts of the state government audited and sends his report to the Assembly through the Governor. The Public Accounts Committee of the State Legislature goes through this report, examines and finally reports to the Legislature. Any instances of unauthorized, improper, or imprudent expenditure are thus discussed in detail and brought to the notice of the Legislature, which can then keep a vigilant eye on the government.

### **Control through Legislative Committees**

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

### **Ministerial Responsibility**

The most potent function of the Legislature is, to enforce the ministerial responsibility. In a Parliamentary form of government, the political executive is a part of the Legislature and is responsible to it all the time. The government can be thrown out at any time by a vote of no-confidence or even on being rejected on its budget or any of the substantive legislative measures. As the political executive is always responsible to the legislature, the administrators become indirectly responsible to it through the ministers.

In spite of these controls, it is often felt that the administration is not responsive enough. On the other hand, it is argued that the legislative control, especially the one through audit is too tight and takes away the initiative of the administrators.

## **STATE COUNCIL OF MINISTERS**

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As already mentioned, the executive power of the state is exercised in the name of the Governor, who is the Constitutional head of the state. But, the Governor has to have a Council of Ministers with the Chief Minister as its head to aid and advise him. But for a few discretionary functions, the Governor has to act on the advice of the Council of Ministers. It means that the real executive power is exercised by the Council of Ministers.

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

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

- i) Cabinet Ministers
- ii) Ministers of State
- iii) Deputy Ministers
- iv) Parliamentary Secretaries

In Government of India, only Cabinet Ministers attend the meetings of the Cabinet. In the state government, however, all the ministers attend Cabinet meetings, making transaction of business, some states have adopted the device of forming Cabinet Committees. Some of these committees are Standing Committees, while some are ad-hoc committees that are constituted to deal with some specific problems. The system of Cabinet Committees is not so popular in the state governments as in the Central government. Most of the important matters in the states are placed before the Cabinet, which meets quite frequently.

As per the recent Ninety First Constitutional Amendment Act 2003, the total number of Ministers including the Chief Minister, in the Council of Ministers in a State shall not exceed fifteen per cent of the total number of members of the Legislative Assembly of the State, provided that number of Ministers, including the Chief Minister in a State shall not be less than twelve. This is the first time that such an Amendment providing for the total strength of Ministers has been enacted.

### **Powers and Functions of the Council of Ministers**

The Council of Ministers is the highest policy-making body of the state government. It lays down policy in respect to all matters within the legislative and administrative competence of the state government. The Council also reviews the implementation of the policy laid down by it and can revise any policy in view of the feedback received during implementation. Since the Governor has to exercise his executive powers on the advice of the Council of Ministers and all the executive power is exercised in the name of the Governor, there is no limitation on the powers of the Council except the following:

- i) The limits imposed by the Constitution and the laws passed by the Union and State Legislature.
- ii) Self-imposed limits to exclude consideration of less important matters.

### **Division of Work into Departments at the State Level**

According to the doctrine of Ministerial Responsibility, the Council of Ministers is collectively responsible to the State Assembly. It is, however, impossible for the Council to take all the decisions collectively. During the early British period, the administration of the state was carried on by the Governor-in-Council. At that time, most of the decisions were taken collectively, because the number of decisions to be taken was not very large. With the passage of time, the scope of governmental activity increased and the matters that came up for the decision of the Council also proliferated. This led to the development of 'portfolio system' in which the Councilors were placed in charge of certain specified subjects leaving only a few important matters to be placed before the whole Council. The same system has continued after Independence. Under our Constitution, the Governor has to make rules for the efficient conduct of business [Article 166(3)]. The state governments have framed 'Allocation of Business Rules', according to which the work is divided among different ministers. This division of work can be done on the basis of functions, or on the basis of clientele, or on geographical basis or on the basis of the combination of these factors. Very often, the division of work is decided on personal considerations rather than rational criteria. Most of the work in respect of subjects allotted to a minister is disposed of by the minister. However, according to the rules of business, some matters have to be reserved by the minister for:

### **Consideration of the Chief Minister**

These are called coordination cases. In these cases, the minister in charge of a portfolio, records his recommendations and submits the file to the Chief Minister for his orders. Rules of business give a list of such cases. The Chief Minister may also reserve some cases or classes of cases for his orders.

### **Presentation before the Cabinet**

These are important policy matters, which have wide repercussions. Important cases of disagreement between two or more ministers are also brought before the Cabinet for its decision. A list of such cases is given in the rules of business. In addition, the Chief Minister may require any particular case of any department to be placed before the Cabinet. A few of the typical Cabinet cases are given below:

- I. Annual Financial Statement to be laid before the Legislature and demands for supplementary grants
- II. Proposals affecting state finance not approved by the Finance Minister Exemption of important matters from the purview of State Public Service Commission
- III. Proposals for imposition of new taxes, etc.

## **ROLE OF THE CHIEF MINISTER**

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The Chief Minister performs the same functions in respect of the state government as the Prime Minister does in respect of the Union Government. Although the real executive power of the state government vests in the Council of Ministers, the Chief Minister has acquired a very special role in the exercise of this executive power. He is not the first among equals, but is the prime mover of the executive government of

the state.

The Chief Minister is appointed by the Governor and holds Office during his pleasure. However, when a single political party has an absolute majority in the Assembly, the Governor has only a ceremonial role in these matters. He has to invite the leader of the majority party to form the government and cannot dismiss him so long as he enjoys the confidence of the Assembly. The only exception probably may occur when the majority party changes its leader in the Assembly. Of course, the Governor does have some discretion in these matters during periods of instability when no single party can claim an absolute majority in the Assembly.

### **Powers of the Chief Minister in Relation to the Council of Ministers**

The Chief Minister is the leader of the Council of Ministers. With the passage of time, the position of Chief Minister has strengthened vis-a-vis his Council of Ministers. He has to assign portfolios among his ministers and can change such portfolios when he likes. He plays a coordinating role in the functioning of his Council of Ministers. He has to see that the decisions of the various departments are coherent. He has to lead and defend his Council of Ministers in the Assembly. In short, he has to ensure the collective responsibility of the Council of Ministers to the State Assembly. The Chief Minister sets the agenda for the Cabinet and greatly influences its decisions. He takes decisions on important matters of coordination even though these are allotted to individual ministers. Moreover, the Governor appoints the Council of Ministers on the advice of the Chief Minister and the ministers hold Office during the pleasure of the Governor. As a result of these provisions, the Minister, in fact, holds Office during the pleasure of the Chief Minister. This power of dismissing the ministers at will and the power to change their portfolios has greatly strengthened the power of the Chief Minister in relation to his ministers and ultimately the Council of Ministers.

It must also be realized that the power of the Chief Minister in relation to his Council of Ministers also depends on political conditions prevailing in the state. If a cohesive party has an absolute majority in the Assembly, the Chief Minister becomes very powerful and the ministers are afraid of him. His power is further enhanced in case of a statewide regional party for; in that case he is not subject to the discipline of the national leadership. The position of a Chief Minister gets weakened if he heads a coalition government or a faction-ridden party. In either case, he or she has to affect compromises to keep a balance among the coalition partners or various factions within the party.

### **Powers of the Chief Minister in Relation to the Governor**

The powers of Chief Minister in relation to the Governor have not been mentioned anywhere in the Constitution. A convention was sought to be established whereby the Chief Minister could be consulted regarding the appointment of the Governor in his state. Even this has not been followed by the Union government in many cases. The only other power, which can be indirectly inferred from the Constitution is the power to exercise executive power of the state in the name of the Governor. All the public appearances of the Governor and the speeches delivered by him on such occasions have to be in accordance with policy laid down by the Council of Ministers headed by the Chief Minister. Similarly, the speeches of the Governor on ceremonial occasions and the annual speech before the Assembly have to be approved by the Cabinet.

### **Powers of the Chief Minister in Relation to the Legislature**

The Chief Minister is also the leader of the House. Apart from this formal position, the Chief Minister provides real legislative leadership to the House in the sense that he sets the legislative agenda. The legislative measures are brought before the Assembly after the approval of the Council of Ministers headed by the Chief Minister. It is true that private members may also bring a Bill before the Assembly. But, that has a limited chance of success. Apart from the fact that it has no backing of the majority party, the private members do not have the wealth of information that is available to the government. Apart from setting up the legislative agenda, the Chief Minister has to keep the Assembly informed about the various activities of the government by answering questions, making statements, intervening in the debates, etc.

### **Powers of the Chief Minister in Relation to the Executive**

By virtue of being the head of the political executive, the Chief Minister controls the entire bureaucracy of the state. In this function, he is assisted by the Secretariat headed by the Chief Secretary. He approves all senior appointments like those of Secretaries, Additional/Joint/Deputy Secretaries. Heads of the Departments, Chairpersons and Managing Directors of Public Sector Undertakings, etc. Through his Cabinet, he controls their service conditions and disciplinary matters. He provides them leadership to ensure good performance and good morale. At the same time, he has to keep a watch on their performance through administrative channels as well as through his own sources like party workers, complaints from aggrieved persons and actual observation during tours etc.

### **THE SECRETARIAT**

The word Secretariat refers to the complex of departments whose heads administratively are Secretaries and politically are Ministers. The Secretary is the Secretary to the Government as a whole, not to the individual Minister. The Secretary is normally a generalist civil servant. But in the case of the Public Works Department, the Chief Engineer is usually the Secretary. Normally, more than one department is entrusted to one Secretary. Hence, the number of Secretariat departments is greater than the number of Secretaries. Like his Central counterpart, the Secretary is

- (a) the principal adviser to the Minister,
- (b) head of the department(s) under his charge,
- (c) responsible for carrying out the policies and decisions made by the political chief, and
- (d) representative of his department(s) before the legislative committees.

### **Organisation of a Department**

A department consists of officers among whom are included, besides the Secretary, the Deputy Secretary, Under Secretary and/or Assistant Secretary. The larger departments may also have Additional and Joint Secretaries. Secretaries, Additional Secretaries, Joint Secretaries,

Deputy Secretaries and Under Secretaries are all, except those belonging to the Secretariat Civil Service, subject to the Tenure System. They are, thus, appointed to the Secretariat for a fixed term. However, the Chief Secretary is not subject to the Tenure System.

Let us now briefly discuss the functions of the officers of the departments.

**Secretary :** The Secretary is the overall incharge of the department. He is the chief advisor to the Minister regarding matters pertaining to his department. He allocates work among the various officers of his department and represents his department before the committees of the Legislature.

**Special/Additional Secretary :** When the work in a particular department becomes too heavy, some-posts of Special/Additional Secretaries may be created to relieve the Secretary of some of the workload. These officers can directly perform some of the functions of the Secretary and may submit files directly to the Minister in respect of the delegated functions performed by them.

**Deputy/Joint Secretary :** The Secretary is assisted by the Deputy Secretary. In some States the posts of Joint Secretaries have been created in order to distinguish between the officers of different seniorities. Sometimes the officers coming from the State civil service are designated as Deputy Secretaries while those coming from the IAS are designated as Joint Secretaries. However, they perform the same functions. The Deputy/Joint Secretaries are placed in charge of a definite wing of the Department and supervise the work of the Under Secretaries. Some powers, to dispose of certain routine cases, are also delegated to the Deputy Secretary. He sends important cases to the Additional Secretary or the Secretary, depending upon the scheme of delegation of work. The Deputy Secretaries are supposed to have a thorough knowledge of the wing controlled by them. They are supposed to analyse the various policy alternatives before sending the files upwards.

**Under Secretary :** Under Secretaries are the lowest level officers who perform the vital function of providing a link between the office and the officers. They are placed in charge of a number of sections each headed by a Section Officer. Section is the lowest unit of work. In some States, the Section is headed by an Assistant Secretary whereas in others it is headed by a Section Officer. The Section Officer is responsible for the distribution of work among the various functionaries of the section. He supervises the work of the Assistants and Upper Division Clerks working in his section, makes them present the cases suitably docketed and referenced and thus ensures the timely submission of files to the officers. Precedents of similar cases have also to be cited while presenting the files.

Besides the officers, the department also consists of the office. The office comprises the

Superintendent (or Section Officer), Assistants, Upper Division and Lower Division Clerks, Steno-typists, and Typists. Unlike officers, the office constitutes the permanent element in the Secretariat system.

While the officers analyse the case and suggest alternative courses of action, the function of the office is to present the cases in the proper form before the officers. Whereas the Lower Division Clerks/Typists do the usual work of typing, referencing, despatching, etc., the Upper Division Clerks/Assistants connect the incoming papers with the previous files and present them along with the precedents. The latter also point out various laws, rules, regulations, practices, etc., connected with the case in question. Their main task is the timely presentation of cases. They are not usually supposed to analyse the cases or suggest alternatives. The work of Assistant Secretary/Section Officer is to ensure that every one is doing his work properly.

**Secretariat Personnel :** Senior officers (Secretary, Special Secretaries, Additional, Joint and Deputy Secretaries) of the Secretariat come on deputation from the IAS. In some States, the position of Deputy Secretaries is also manned by State civil service officers on deputation. The Tenure System of placing officers in the Secretariat also applies in the States as in the Central Secretariat. However, the operation of the tenure rule in the States is much more flexible. In the States, Government officers are frequently transferred without any reference to any fixed tenure.

In the Secretariat, most of the positions are manned by the officers from the civil services but some officers are brought to the Secretariat from technical services also, e.g., posts of Deputy/Joint/special Secretaries in technical departments like Public Works Department, Irrigation, etc. In a large number of States even the post of Secretaries in the technical departments are being occupied by technical services personnel.

The officers of the IAS, the State civil service and other services come on deputation to the Secretariat and go back to the field on completion of their tenure. But unlike the officers, the functionaries in the Secretariat office are not deputationists. Most of them belong to the services recruited for the Secretariat. There are Subordinate Service Commissions in many States to conduct the examinations for their recruitments. Their recruitment, promotion and service conditions, etc., are governed by the relevant rules. These services are managed by the General Administrative Department of the State Government which functions directly under the Chief Secretary.

**Number of Secretariat Departments :** The number of Secretariat departments varies from State to State, ranging between 11 and 34. Most States, however, have the following Secretariat departments : (1) General Administration (2) Home (3) Revenue (4) Food and Agriculture (5) Planning (6) Panchayati Raj (7) Finance (8) Law (9) Public Works (10) Irrigation and Power (11) Education (12) Industries (13) Co-operation (14) Transport (15) Local Government (16) Jails (17) Labour and Employment (18) Excise and Taxation.

**Distinction between Secretariat and Executive Departments :** In the words of the Simon Commission, the executive department 'is an administrative unit, separate from the Secretariat, which reaches its apex, usually, in a single officer like the Inspector-General of Police, or the Chief Conservator of Forests, outside the Secretariat altogether. Such a head of department will usually be concerned principally with a single Secretary to Government and a single Minister, for his orders and the funds which he has to spend.' Not all departments, however, have executive departments attached to them. Some of the Secretariat departments are engaged in advisory and controlling functions and do not, therefore, have executive departments reporting to them, eg., the departments of Finance and law.

### Functions of the Secretariat

1. It assists and advises the Minister in the formulation of Government policies and programmes.
2. It collects the necessary data from different sources and analyses it with a view to suggest various courses of action necessary for policy formulation.
3. It gives general direction and guidance to the Directorates and other field agencies for the efficient implementation of Government policies and decisions.
4. It monitors the implementation of various programmes and evaluates the performance of different field agencies.
5. It also suggests corrective action.
6. It acts as the spokesman of the Government and maintains contact with the Central Government and other State Governments and outside agencies.

**Critical Evaluation :** The Secretariat is being criticized for becoming expansionist in its attitude and behaviour and for arrogating to itself powers and functions which do not come under its purview. A number of factors explain this phenomena but the most important factor happens to be parliamentary democracy itself. The Minister, who is responsible to the Legislature for efficient functioning of his department, has to answer questions relating to his department. The Minister, therefore, intends to closely supervise the department. This also explains the centralization of functions in the Secretariat and its expansion. Besides, there are human and psychological factors as well. The Secretariat's tendency to concentrate powers in its hands has led to inefficiency in the working of the Government. Thus, attempts are being made to contain this expansion of the Secretariat by preparing a list of the functions which are to be looked after by it.

It is also alleged that the functioning of the Secretariat is very slow like the examination of proposals, etc. This slow and tardy processing of the cases in the Secretariat impairs the efficiency of the field agencies. There is a general tendency, among the officers, to make efforts to stay on in the Secretariat as it offers attractive salary, remuneration, educational and medical facilities, etc. Apart from all this, by working at the Secretariat, in close contact with the 'heads' the officers

aggregate much power and influence. This tendency on the part of the officers is a great hindrance to the Tenure system. By staying for too long at the Secretariat the officers lose touch with the field problems.

## ***THE CHIEF SECRETARY***

**Genesis of the Office :** The office of the Chief Secretary, dates back to 1799 when Lord Wellesley, the then Governor-General of India, appointed G.H. Barlow as the Chief Secretary for the first time. It may be noted that the office of the Chief Secretary, which started functioning in the Central Government, disappeared in course of time from the Central Government. At present, there is no office in the Government of India which is equivalent to that of the Chief Secretary in the State.

**Role of Chief Secretary:** In every State, the Chief Secretary is the head of the General Administration Department. He is the kingpin of the Secretariat and his control extends to all the departments of the Secretariat. He is head of the civil services in the State, their mirror and conscience-keeper. He provides leadership to the administrative system of the State and is the chief public relations officer of the Government and the main channel of communication between the Government and the Central and other State Governments.

### **Functions of the Chief Secretary:**

1. He is the principal adviser to the Chief Minister in all administrative matters including appointments to senior positions.
2. He is the Secretary to the Cabinet and prepares the agenda for its meetings and maintains records of the proceedings.
3. He exercises general supervision and control over the entire Secretariat and its field administration.
4. He is the head of the civil service and has the authority to make postings, transfers, etc., of Government personnel. An empirical study conducted by a State Government reveals that two out of every three cases dealt with by the Chief Secretary relate to personnel matters.
5. By rotation, he becomes the Secretary of the Zonal Council of which his State is a member.
6. He exercises administrative control over the Secretariat buildings, including allocation of rooms in them.
7. He exercises control over the staff attached to the Ministers.
8. He has control over the central record branch, the Secretariat library, and the conservancy and watch and ward-staff who serve all the departments of the Secretariat.
9. He performs all the residuary functions, i.e., matters not falling within the responsibilities of other Secretaries.

10. As chief of all Secretaries, he presides over a large number of committees and is appointed a member of many other committees, concerned with high level policy.
11. He plays an important role in times of crisis. Until 1973, the Chief Secretary was not necessarily the senior most official in all the States. In 1973, the post of Chief Secretary was equated with that of the Secretary to the Government of India, giving him the emoluments admissible to the latter.