

MANIDHANAHEYAM FREE IAS ACADEMY – TNPSC GROUP II & IIA
UNIT - II

ADMINISTRATION OF STATE GOVERNMENT

1. The Governor (6 marks)

- 1) The Governor is the constitutional head of the state executive. The administration of a State is carried on in the name of the Governor. Generally, there is a separate Governor in each State but if the situation warrants so, the same person may be appointed as the Governor of two or more States.
- 2) Article 154 vests the executive power of the State in the Governor. Article 154(1) holds that the executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinates to him in accordance with this Constitution.

Appointment

- 1) The Governor of a State shall be appointed by the President. His usual term of office is five years but he holds office during the pleasure of the President. Generally, the Governor does not belong to the State where he is appointed. He can also be transferred from one state to another by the President. He can also resign any time by addressing his resignation to the President.
- 2) The Legislature of a State or a High Court has no role in the removal of a Governor. A person may be appointed as a Governor for any number of terms. Two conventions have been set up in the matter of appointing a person as Governor of a State. He should not be a resident of the State concerned and, the State Government concerned is consulted and its views are sought regarding the proposed choice.
- 3) According to Article 158 (3A), where the same person is appointed as Governor of two or more States, the emoluments and allowances payable to the Governor shall be allocated among the States in such proportion as the President may by order determine.

Qualification

Article 157 and Article 158 of the Constitution of India specify eligibility requirements for the post of governor. They are as follows:

- 1) He should be a citizen of India.
- 2) He must have completed 35 years of age.

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- 3) He should not be a member of Parliament or of any State Legislature. If he is a member of any of Legislature, he automatically vacates his seat on assuming the office.
- 4) He should not hold any other profitable occupation.

2. Powers and Functions of the Governor (15 mark)

The Governor is the head of the state executive and he has enormous powers. In the exercise of functions and powers, the Governor, except in certain cases, is to be guided by the aid and advice of the Council of Ministers headed by the Chief Minister (under Article 163). As the executive head in the state level, the Governor has following functions and powers.

Executive Powers

- 1) The Constitution vests all executive powers of the State Government in the Governor. He may exercise this power either directly or through officers subordinate to him. He is the constitutional head of the State. All the administration is carried on in his name.
- 2) The executive powers and functions of the Governor are:
- 3) He appoints the leader of the majority party in the State Legislative Assembly as the Chief Minister of the State.
- 4) He appoints other members of the Council of Ministers on the recommendation of the Chief Minister.
- 5) He appoints the Advocate - General of the state and determines his remuneration. The Advocate General holds office during the pleasure of the Governor.
- 6) 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.
- 7) 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.
- 8) He acts as the chancellor of universities in the state. He also appoints the Vice Chancellors of universities in the state.

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- 9) He directly rules a State when there is the imposition of the President's rule in the State.

Legislative Powers

The Governor is an integral part of the state legislature. But, he is not a member in the either house of the legislature. In this capacity, he enjoys the following legislative powers and functions:

- 1) He has the right to summon, prorogue the state legislature and dissolve the State Legislative Assembly.
- 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.
- 3) He can send messages to the houses of the state legislature relating to a bill pending in the legislature.
- 4) He can appoint any member of the Legislative Assembly to preside over its proceedings when the offices of both the Speaker and the Deputy Speaker fall vacant.
- 5) He can nominate one member to the state legislature assembly from the Anglo-Indian Community.
- 6) He nominates 1/6 of the members of the State Legislative Council from amongst the persons having special knowledge or practical experience in literature, science, art, cooperative movement and social service.
- 7) He decides on the question of disqualification of members of the state legislature in consultation with the Election Commission.
- 8) Every bill passed by the state legislature will become law only after his Assent. But, when a bill is sent to the Governor after it is passed by the legislature, he has the options to give his assent to the bill or withhold his assent to the bill or return the bill for the reconsideration of the legislature.
- 9) He has to reserve any bill passed by the state legislature which endangers the position of the state High Court, for the consideration of the President.
- 10) He can promulgate ordinances when the state legislature is not in session under Article 213. But, these ordinances must be approved by the legislature within six months. He can also withdraw an ordinance at anytime.

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- 11) He has to lay the annual reports of the State Finance Commission, the State Public Service Commission and the Comptroller and Auditor General relating to the accounts of the state, before the state legislature.

Financial Powers

- 1) The Constitution confers on the Governor, the duty to get prepared and introduced to the State Legislature, the annual budget and also the supplementary budgets, if necessary.
- 2) He causes the Annual Financial Statement (Budget) of the State to be presented in the Legislative Assembly.
- 3) He presents through the Minister of Finance of the State the Supplementary Budget of the State to the Legislative Assembly if there be such a need.
- 4) Money Bills can be introduced in the State Legislature only with his the prior recommendation of Governor.
- 5) No demand for any grant can be made except on his recommendation.
- 6) He can make advances out of the state Contingency Fund to meet any unforeseen expenditure.
- 7) He constitutes a State Finance Commission after every five years to review the financial position of the panchayats and the municipalities.

Judicial Powers

- 1) He appoints the Attorney-General of the State.
- 2) He appoints Judges to the Subordinate Courts in the State.
- 3) He makes appointment, postings and promotions of the District Judges in consultation with the State High Court.
- 4) The Chief Justice of the High Court in the State is appointed by the President in consultation with him.
- 5) He can pardon, commute or reprieve punishment on receipt of appeals for mercy, except for the judgement given under union law, Marshall Law and capital punishment through any law.

Discretionary Powers

- 1) The Governor can reserve a bill for the consideration of the president.
- 2) He recommends for the imposition of the President's rule in the state.
- 3) He seeks information from the Chief Minister relating to the administrative and legislative matters of the state.

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- 4) He can call the leader of any party to form ministry in the state when there is no clear-cut majority to any party in the Legislative Assembly after the general elections.
- 5) He can dismiss the Council of Ministers when it is unable to prove the confidence of the Legislative Assembly; and
- 6) He can dissolve the Legislative Assembly if the Council of Ministers has lost its majority.

Emergency Powers

If the Governor is satisfied that the government of the state is not carried on in accordance with the provisions of the Constitution, he may, under Article 356, recommend to the President to impose President Rule in that State. As soon as the President Rule is imposed, the administration of the State is carried on by the Governor as the representative of the President.

3. Privileges of the Governor (6 marks)

Article 361 provides for the following Immunities / Protections for the Governor;

- (1) The Governor of a State, is not be answerable to any court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties.
- (2) No criminal proceedings whatsoever shall be instituted or continued against the Governor of a State, in any court during his term of office.
- (3) No process for the arrest or imprisonment of the Governor of a State, shall issue from any court during his term of office.
- (4) No civil proceedings in which relief is claimed against the Governor of a State, Untill befor 2 month written notice.

4. Chief Minister (12 marks)

In the scheme of Parliamentary system of government provided by the constitution, the governor is the nominal executive authority and the Chief Minister is the real executive authority. In other words, the governor is the head of the State while the Chief Minister is the head of the government.

The appointment of the Chief Minister

- 1) The Chief Minister is appointed by the Governor of the State. The leader of the majority party or majority group in the State Legislative Assembly is

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appointed as the Chief Minister. In case no party commands absolute majority, in the Legislative Assembly or the majority fails to elect its leader, the Governor can use his power and invite the leader of the other largest party to form the ministry. He has to prove the confidence (majority support) in the Legislative Assembly within the period stipulated by the Governor.

- 2) The term of the Chief Minister is not fixed. He may remain as the Chief Minister as long as he enjoys the support of the majority of the members of the Legislative Assembly. He has to resign when he loses confidence of the majority in the assembly. It is understood that normally he completes 5 years term like other members in the Legislative Assembly.

Powers and functions of the Chief Minister

The Chief Minister is the real executive head of the State administration. He has the following powers and functions.

- 1) Relating to the council of ministers
- 2) Relating to the Governor
- 3) Relating to the State Legislature
- 4) Other functions and powers.

Relating to the Council of Ministers

As the head of the Council of Ministers, the Chief Minister enjoys the following functions and powers.

- 1) The Chief Minister recommends the persons who can be appointed as ministers by Governor.
- 2) He allocates the portfolios among the ministers.
- 3) He shuffles and reshuffles his ministry.
- 4) He can ask a minister to resign or to advise the Governor to remove him in case of difference of opinion.
- 5) He presides over the meetings of the Council of Ministers and influences its decisions.
- 6) He can bring about the collapse of the council of ministers by resigning from office.
- 7) He guides, directs, controls and coordinates the activities of all the ministers.

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Relating to the Governor

The Chief Minister is the principal channel of communication between the Governor and the Council of Ministers, and he advises the Governor in relation to the appointment of the following officials:

- 1) Advocate General of the State.
- 2) State Election Commissioner.
- 3) Chairman and Members of the State Public Service Commission.
- 4) Chairman and Members of the State Planning Commission.
- 5) Chairman and Members of the State Finance Commission.

Relating to State Legislature

- 1) The Chief Minister advises the Governor with regard to the summoning and proroguing the sessions of the state legislature.
- 2) He announces the government policies on the floor of the house.
- 3) He can introduce the bills in the Legislative Assembly.
- 4) He can recommend for the dissolution of the Legislative Assembly to the Governor anytime.

Other function and powers

- 1) As the leader of the ruling party, the Chief Minister has to control the party and develop the disciplines.
- 2) As the leader of the state, he has to keenly consider the demands of the different sections of the people.
- 3) As the political head of the various services, he has to supervise, control and co-ordinate the secretaries of various departments in the state level.
- 4) For smooth functioning of the state and for good centre-state relations, he has to develop a rapport with the union government.

5. Council of Ministers (12 marks)

- 1) The Council of Ministers are collectively responsible to the State Legislature. All the members of the Council of Ministers must be the members of the State Legislature. Those who are not the members at the time of their appointment, must secure their seats in the Legislature within a period of 6 months. All the ministers work as a team under the Chief Minister. As long as the Chief Minister is in office, the Council of Ministers will also be in power. If a no-

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confidence motion is passed by the Legislative Assembly, the State Ministry shall resign.

- 2) Article 163 provides for a Council of Ministers to aid and advice the Governor. According to Article 163(1) there shall be a Council of Ministers with the Chief Minister at the head to aid and advice 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.

Other Provisions relating to Ministers

- 1) Article 164(1) holds that the Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister, and the Ministers shall hold office during the pleasure of the Governor:
- 2) Article 164(1A) states that the total number of Ministers, including the Chief Minister, in the Council of Ministers in a State shall not exceed fifteen percent of the total number of members of the Legislative Assembly.

The functions and powers of the Council of Ministers

- 1) It formulates and decides the policies of the state and implements them effectively.
- 2) It decides the legislative programmes of the Legislative Assembly and sponsors all important bills.
- 3) It controls the financial policy and decides the tax structure for the public welfare of the state.
- 4) It chalks out programmes and schemes for the socio-economic changes so that the state makes headway in various inter-related fields.
- 5) It makes the important appointments of the Heads of Departments.
- 6) It discusses and takes efforts on the dispute with other states
- 7) It advises the Governor on the appointment of Judges of the subordinate courts.
- 8) It frames the proposal for incurring expenditure out of state reserves.
- 9) It decides all the bills whether ordinary bills or money bills to be introduced in the Legislative Assembly.
- 10) Each minister of the Council of Ministers supervises, controls and coordinates the department concerned.

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11) Annual Financial Statement called as the Budget is finalised by the Council of Ministers.

6. The Legislative Assembly (Lower House) (12 marks)

- 1) The Legislative Assembly is a popular house. It is the real centre of power in the State. It consists of members directly elected by the people on the basis of adult franchise. The strength of the Assembly varies from State to State depending on the population. However the maximum strength of the Assembly must not exceed 500 or its minimum strength not be below 60. The term of office of the legislative assembly is 5 years. It can be dissolved even before the expiry of its term.
- 2) The size of the Legislative Council cannot be more than one-third the membership of the Legislative Assembly (lower house) of that state. But its size cannot be less than 40, except in Jammu and Kashmir where there are 36 by an act of Parliament. The members draw the salary and allowances passed by the State legislature from time to time.

Composition

- 1) The Legislative Assembly of Tamil Nadu consists of 235 members out of which 234 members are directly elected by the people from the constituencies on the basis of adult franchise and one member is nominated by the Governor from the Anglo-Indian community. However, seats shall be reserved in the house for the scheduled castes and scheduled tribes.

Cabinet and Cabinet Committees

- 1) A smaller body called Cabinet is the nucleus of the council of minister. It consists of only the cabinet ministers. It is the real centre of authority in the state government.
- 2) The cabinet works through various committees called cabinet committees. They are of two types - standing and ad hoc. The former are of a permanent nature while the latter are of a temporary nature.

The Speaker

The Legislative Assembly elects two of its members as the Speaker and Deputy Speaker. The Speaker vacates his office, if he cannot continue to be a member of the Assembly. He may also resign his office at any time. The speaker may be removed from office by a resolution of the Assembly after

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giving a 14 days' notice. Such a resolution must be passed by a majority of the members present at the time of voting. The speaker does not vacate his office, when the Assembly is dissolved. He continues to be the Speaker until the first sitting of the new Assembly. While the office of the speaker is vacant, the Deputy Speaker performs his functions.

7. The Legislative Council (Upper House) (12 marks)

- 1) The legislative Council is the upper House of the State Legislature. It is constituted as a permanent House. Article 171(1) provides that the total number of members in the Legislative Council of a State shall not exceed one-third of the total number of members in the Legislative Assembly of that State, but not less than 40 members in any case.
- 2) The (Legislative Council) forms a part of the state legislatures of India. In Six of India's 28 states (Bihar, Karnataka, Maharashtra, Uttar Pradesh, Andhra Pradesh, Telangana and Jammu - Kashmir) the Legislative Council serves as the indirectly elected upper house of a bicameral legislature. It is also a permanent house because it cannot be dissolved. Every Member of Legislative Council (MLC) serves for a six-year term, with terms staggered so that the terms of one-third of members expire every two years. MLCs must be citizens of India not under 30 years of age, mentally sound and not bankrupt, and his name should be in the voter's list of the state from which he or she is contesting the election.

Election to Legislative Council

- 1) 1/3 of the members are elected by local bodies.
- 2) 1/12 of the members are elected by Graduates of the universities in the State.
- 3) 1 /12 of the members are elected by Graduate teachers.
- 4) 1/3 of the members are elected by the members of the Legislative Assembly.
- 5) 1/6 is nominated by the Governor who is eminent in the field of literary excellence, art, social services or Co-operation.

The Chairman

The Chairman (chair person he / she) is the Presiding Officer of the Upper house. The Members elect a Chairman and a deputy chairman from among themselves. In the absence of the chairman, the deputy chairman officiate the functions of the Legislative Council.

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Abolition or Creation of Legislative Councils

Article 169 deals with the creation or abolition of Legislative Council in a State. Article 169 holds that if the state Legislative Assembly passes a resolution by a majority of not less than 2/3rd of the members present and voting and by the majority of total strength of the House, requesting the Parliament to create or abolish the state Legislative council then the Parliament may by law provide for the abolition and creation of the Legislative Council.

8. Functions of the State Legislature (12 marks)

The powers and functions of the State Legislature are almost the same as that of Parliament.

Legislative powers

The State Legislature can pass laws on all subjects mentioned in the State List and concurrent list (List II & List III Respectively) as per the constitution. The State made law in a concurrent subject will become inoperative when the centre also passes a law on the same subject. The passing of Bill into law follows the same procedure, as in the union parliament. Every bill passes through three readings. Then it becomes an Act with the Governor's assent.

Financial Powers

The Legislature controls the finances of the State. The Lower House enjoys greater power than the Upper House in money matters. Money bills can be introduced only in the Lower House or the Assembly. No new tax can be levied without the sanction and permission of the Assembly.

Controls over the Executive

The Legislature controls the Executive. The Council of Ministers is responsible to the Assembly. The Ministers have to answer questions asked by the members of the Legislature. They can be removed from office if the Assembly passes a vote of "no confidence motion" against the Ministry.

Wide powers

In State having two Houses, the Legislative Assembly enjoys more powers than the Legislative Council. The Assembly has complete control over the state finance. The Council cannot vote for grants. The Council of Ministers is responsible only to the Assembly.

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9. High Courts (6 marks)

- 1) The institution of high court originated in India in 1862 when the high courts were set up at Calcutta, Bombay and Madras. In the course of time, each province in British India came to have its own high court. After 1950, a high court existing in a province became the high court for the corresponding state. The High Courts are the highest courts at State level, but being part of integrated Indian judiciary they work under the superintendence, direction and control of the Supreme Court.
- 2) The Constitution of India provides for a high court for each state, but the Seventh Amendment Act of 1956 authorised the Parliament to establish a common high court for two or more states or for two or more states and a union territory.
- 3) For example, the States of Punjab and Haryana and the Union Territory of Chandigarh have a common High Court situated at Chandigarh.
- 4) Similarly, the High Court of Guwahati is common for seven northeastern States of Assam, Nagaland, Manipur, Meghalaya, Mizoram, Tripura and Arunachal Pradesh. Delhi, though not a State, has its own separate High Court. Every High Court has a Chief Justice and a number of judges. The number of judges varies from State to State. The number of judges of each High Court is determined by the President. At present there are 25 High Courts for 28 States (including new Andhra Pradesh High Court established in 1st January 2019 at principal seat in Amravati) and Eight Union Territories.

Appointment of the Judges

Every High Court consists of a Chief Justice and such other Judges as appointed by the President from time to time (Article 216).

10. Jurisdiction and Powers of High Court (15 marks)

- 1) At present, a high court enjoys the following jurisdiction and powers:
- 2) Original Jurisdiction In their judicial capacity, the High Courts of the Presidency towns (Bombay, Calcutta and Madras) have both original and appellate jurisdictions, while other High Courts have mostly appellate jurisdiction.
- 3) Only in matters of admiralty, probate, matrimonial and contempt of Court, they have original jurisdiction. The Presidency High Courts have original

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jurisdiction in which the amount involved is more than 2000 and in criminal cases which are committed to them by the Presidency Magistrates.

Appellate Jurisdiction

As Courts of appeal, all High Courts entertain appeals in civil and criminal cases from their subordinate Courts as well as on their own.

They have, however, no jurisdiction over tribunals established under the laws relating to the Armed Forces of the Country.

Writ Jurisdiction

- 1) Under Article 226 of the constitution, the High Courts are given powers of issuing writs not only for the enforcement of the Fundamental Rights, but also for other purposes. In exercise of this power, a Court may issue the same type of writs, orders or directions which the Supreme Court is empowered to issue under Article 32.
- 2) The jurisdiction to issue writs under this Article is larger in the case of High Courts, for which the Supreme Court can issue them only where a Fundamental Right has been infringed, a High Court can issue them not only in such cases, but also where an ordinary legal right has been infringed.
- 3) **Habeas Corpus:** The writ of habeas corpus is issued to a detaining authority, ordering the detainer to produce the detained person in the issuing court, along with the cause of his or her detention, if the detention is found to be illegal, the court issues an order to set the person free.
- 4) **Mandamus:** The writ of mandamus is issued to a subordinate court, an officer of government, or a corporation or other institution commanding the performance of certain acts or duties.
- 5) **Prohibition:** The writ of prohibition is issued by a higher court to a lower court prohibiting it from taking up a case because it falls outside the jurisdiction of the lower court. Thus, the higher court transfers the case to it.
- 6) **Quo Warranto:** The writ of quo Warranto is issued against a person who claims or usurps a public office. Through this writ the court inquires 'by what authority' the person supports his or her claim.
- 7) **Certiorari:** The writ of certiorari is issued to a lower court directing that the record of a case be sent up for review, together with all supporting files, evidence and documents, usually with the intention of overruling the

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judgment of the lower court. It is one of the mechanisms by which the fundamental rights of the citizens are upheld.

Supervisory Jurisdiction

High court has the power of superintendence over all courts and tribunals functioning in its territorial jurisdiction (except military courts or tribunals) Thus, it may

- 1) Call for returns from them.
- 2) Make an issue, general rules and prescribe forms for regulating the practice and proceedings of them.
- 3) Prescribe forms in which books, entries and accounts are to be kept by them.
- 4) Settle the fees payable to the sheriff, clerks, officers and legal practitioners of them.

Control over Subordinate Courts

A high court has an administrative control and other powers over them

- 1) It is consulted by the governor in the matters of appointment, posting and promotion of district judges and in the appointments of persons to the judicial service of the state (other than district judges).
- 2) It deals with the matters of posting, promotion, grant of leave, transfers and discipline of the members of the judicial service of the state (other than district judges).
- 3) It can withdraw a case pending in a subordinate court if it involves a substantial question of law that requires the interpretation of the Constitution. It can then either dispose of the case itself or determines the question of law and return the case to the subordinate court with its judgment.
- 4) Its law is binding on all subordinate courts functioning within its territorial jurisdiction in the same sense as the law declared by the Supreme Court is binding on all courts in India.

Court of Record

All the decisions and decrees issued by the High Court are printed and are kept as a record for future references by the Court as well as by the lawyers, in such a need arises. Thus, it also acts as a Court of Record.

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Power of Judicial Review

- 1) Judicial review is the power of a high court to examine the constitutionality of legislative enactments and executive orders of both the Central and state governments. Though the phrase judicial review has nowhere been used in the Constitution, the provisions of Articles 226 and 227 explicitly confer the power of judicial review on a high court
- 2) The 42nd Amendment Act of 1976 curtailed the judicial review power of high court. It debarred the high courts from considering the constitutional validity of any central law. However, the 43rd Amendment Act of 1977 restored the original position.

11. Speaker of the State Legislative Assembly (12 mark)

- 1) The Speaker is elected by the Members of Legislative Assembly itself, and is the Presiding officer of the Assembly. The speaker has the responsibilities and powers of conducting business of the assembly in orderly manner, maintaining decorum and regulating its procedure in terms of allowing the members to question, speak on matters of importance, budget and grants. The speaker is the interpreter of the provisions of the Constitution, rules of procedure in the assembly proceedings, rules of procedure and legislative precedents within the Assembly. The speaker has the power to adjourn, suspend and resume the sessions and suspend the members from participating in the session when there is a violation of rules, procedures and regulations of the assembly.
- 2) The speaker has to generally maintain neutrality and impartiality while conducting the business of the house. The speaker's vote becomes more important when there is a tie on any issue regarding passing of bill, motion and resolutions. The speaker's decision is final in regulating the conduct of members and in matters of procedure or maintaining order in the house. And in such matters the speaker is not to be subjected to judicial intervention. The speaker appoints the Chairmen of all the committees and supervises their functioning.

The Speaker

The Legislative Assembly elects two of its members as the Speaker and Deputy Speaker. The Speaker vacates his office, if he cannot continue to be a member of the

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Assembly. He may also resign his office at any time. The speaker may be removed from office by a resolution of the Assembly after giving a 14 days' notice. Such a resolution must be passed by a majority of the members present at the time of voting. The speaker does not vacate his office, when the Assembly is dissolved. He continues to be the Speaker until the first sitting of the new Assembly. While the office of the speaker is vacant, the Deputy Speaker performs his functions.

The Deputy Speaker

The Deputy Speaker is also elected by the members of the Assembly from amongst themselves. He performs the duties and responsibilities of the speaker as his absence presides over the Assembly in the absence of the Speaker. The deputy speaker has also powers on par with the speaker within the House. Any member existed in a panel can preside over the House in case of absence of Speaker and the deputy speaker.

