

## Examrace

### Polity Study Material: State Council of Ministers

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#### State Council of Ministers

The Constitution provides for a Council of Ministers, with a Chief Minister at its head, to aid and advise the Governor in the exercise of his functions. The Governor appoints the Chief Minister and his Ministers. Usually, all the Ministers must be members of the Legislature of the State but sometimes even a non member may be appointed a Minister. In that case, he cannot retain his office for more than six months without being a member of the Legislature of the State. The Council of Ministers is collectively responsible to the Legislative Assembly of the State.

#### State Legislature

In every State, the Legislature consists of the Governor and

1. in case of Bihar, Maharashtra, Karnataka, U P and Jammu & Kashmir two Houses, namely, Legislative Council and Legislative Assembly
2. in other States one House, viz. Legislative Assembly. Legislative Assembly: It is a directly elected body on the basis of adult franchise. The total number of members of the Assembly shall in no case be more than 500 or less than 60. Its normal life is five years. A candidate for election to the Legislative Assembly of a State should be
  - a. a citizen of India
  - b. not less than 25 years of age
  - c. not holding an office of profit under the Government.

#### Legislative Council

This is a permanent body. One third of its members retire every second year. Its total members should not exceed one third of the members of State Legislative Assembly. Its minimum strength is 40. Only U P, Bihar, Maharashtra, Karnataka and Jammu & Kashmir have Legislative Councils.

#### Legislative Powers between Union and State

The Constitution of India makes a division of legislative powers between the Union and the States under Seventh Schedule. The Union Parliament has powers to make laws for the whole or any part of the territory of India, while the Legislature of a State can make laws for the State concerned. Also, like the Government of India Act, 1935, there is three fold distribution of powers between the Union and the States:

1. **Union List:** It includes 99 subjects over which the Union Parliament has exclusive power of Legislation such as Defence, Foreign Affairs, Banking, Currency, etc.
2. **State List:** It comprises 61 items over which the State Legislatures have exclusive powers of Legislation, e. g. Health, Agriculture, etc.
3. **Concurrent List:** It comprises 52 items in which the Union and the State Legislatures both can make laws, e. g. criminal law and procedure, marriages, economic planning, education, etc.
4. **Residuary Powers:** According to Art. 248 of the Constitution, the residuary powers are vested in the Union Legislature, i.e.. . the Parliament have the exclusive right to make any law with regard to any matter not specified in the Concurrent or State List.

**Conflict of Jurisdiction:** In case of the overlapping of a matter as between the lists, predominance has been given to the Union Legislature. Thus, in the case of repugnancy between a law of the State and a valid Union law, the latter will prevail and the law made by the State to the extent of repugnancy shall be void. If, however, the legislation relates to a concurrent subject, the State legislation may prevail, notwithstanding any repugnancy, if the State law had been reserved for the President and received his assent.

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