CHAPTER -I
INTRODUCTION

Once after Pakistan became a fait accompli the imperatives of national unity and a co operative federation received articulate recognition and the constitution maker conceived a system of government which can be described as federal parliamentary. There is a certain amount of dichotomy between federalism and parliamentarism and unless all the paradoxes are welded into a harmonious organic whole a symphonic and untrammeled working of the system is not possible. It was somewhat a hazardous experiment n demanded for its success a high degree of political morality rather than political ingenuinity could stand as an effective guarantee to the success of the constitution. Dr. Ambedkar had rightly said, “I feel, however, good a constitution may be, it is sure to turn out bad because those who are called to work it, happen to be a bad lot. However, bad a constitution may be, it may turn out to be good if those who are called to work it, happen to be a good lot.”

In the process such institutions as the President and state Governors, who were intended to play a prominent role of ensuring the protection of the constitution, were reduced to positions of automatons working under the dictates of Central Government. As a result of it, what has come to stare stark in the face is that the federal-parliamentary spirit of the constitution has been wantonly scattered to the wind thrusting up Centre-State tensions to alarming heights. It could happen because the Governor who was intended to work as a constitutional head of the state, exercising his discretionary powers strictly in conformity with the parliamentary principles, was, instead, made to function as a political agent of the central government, acting according to the instructions and directions of his mentors and thereby standing in good stead to prop up their doddering and sliding fortunes in equations of state politics. The suppression of the Governors role from one of the constitutional head to that of a agent of the Central Government made for the ethos of the constitution to fritter away.

\(^1\) cad,vol.11 pg-975
Governor is a common political title for the official head of a dependent or component unit in a large constitutional structure. Governorships of one type have existed in the British, French, Dutch, and other empires; those of another type exist in the states of United States and in Brazil and Mexico. In the State Government of India, the Governorship derived from British origins but traced a separate course. The office of the Governor in India is as old as 1665 when, under the Charter of 1661 a Governor was appointed at Madras. It will be beyond the scope of this study if the whole development is explained from the beginning to substantiate the above generalization. We may start with the Government of India Act, 1919, wherein for the first time element of representative Government was provided under this “Dyarchy System” was introduced and the executive government in the Province was split in two distinct parts. In the new system the Governor of the Province played a pivotal role. The system of Dyarchy was a complex system having no logical basis and was rooted in compromise. The system operated in the spirit of harmony, goodwill and co-operation between legislature and executive during the first three years after the commencement of the act, but it soon cracked down after being unsatisfactory and unworkable. Therefore, it became necessary to remove the defects in provincial executive interalia. For this purpose Government of India Act 1935 was passed. This Act went a step further towards the decentralization of powers and conferred a separate legal and constitutional status to the provinces. But this Constitution also was not up to the wishes of the people, the federation at the centre could never come into being and provincial governments could also not function properly and the Governors had more opportunity of interference in the governmental business.

In the course of the efforts to provide a Constitution according to the wishes of the people, a constituent Assembly was established in 1946. Hardly had the Assembly been able to proceed due to the internal differences, when the decision was taken to grant independence to India on 15th August, 1947 by dividing it

3 It should not be taken as denial of Governorship in India prior to that but than the word used was 'Subahadar' under the Muslim rulers.
4 The transference of responsibility for certain functions of the government to the elected representatives of the people in the provinces while reserving control over others with the Governor mad his Council under this Act known as “Dyarchy System”.
5 Thompson and Garratt: British Rule in India, p.615.
6 S. Gwyer and Appadorai, "Speeches and Documents on the Indian constitution 1921-47", Vol. XLVII.
into two dominions - India and Pakistan. Under the authority of the Indian Independence Act, 1947, the Government of India repealed the provisions relating to the "Discretionary" functions and to the special responsibilities of the Governors. Following the same development the Constituent Assembly provided for the present provisions in which there has been left no place for any discretion to be exercised by the Governor except in so far as it has been so required by or under the Constitution. This development depicts that historical process, i.e., the transfer of power from one man, whether a monarch or any other head, to the people or to their representatives. Now we may reveal this development in somewhat detail in this chapter in the following order:

a) The Role of Governor under the Government of India Act, 1919:-

British India was previously divided into fifteen Provinces of which three were Governorship-in-Council, four were Lieutenant Governorship and eight chief Commissionership. The Act raised to the status of Governorship-in-Council five of the provinces formed under Lieutenant Governors or Chief Commissioners thereby raising total number of Governor's Provinces to eight. The provisions of Section 46 of the Government of India Act, 1915, which required that the Governors of three provinces shall be appointed by His Majesty by warrant under the Royal sign Manual were extended to the New “Governor's Provinces" with the additional proviso that in the latter case appointments shall be made after consultation with Governor-General. Therefore, it is clear that under the Government of India Act, 1919 Governors of three Presidencies were appointed direct by His Majesty under the Royal Sign Manual and Governor's of the remaining five provinces were appointed after consultation with the Governor-General.

Although, the Governors were differ in position and status but wielded identical powers in their respective provinces. An instrument of Instructions was issued by His Majesty in identical terms to the Governors of all the eight "Governor's Provinces" laying down the lines and manners in which the Governors were to act in the exercise of their powers and duties. The Instrument specifically required him:-

7 Sec. 51 to 56 of India (Provincial Constitution) Order, 1947.
1. to see that all measures necessary to preserve tranquility and to prevent religious or social conflict were duly taken and all orders issued by the Secretary of State or the Governor-General-in-Council were complied with;

2. to provide for the advancement and social welfare of small and backward communities which could not fully rely for their protection upon political action;

3. to safeguard all members of the Indian Services in the legitimate exercise of their functions and the enjoyment of all recognized rights and privileges; and

4. to prevent the establishment of a trade monopoly or any unfair discrimination in matters affecting commercial or industrial interests.

(i) Governors, Powers in respect of Legislation and Budget:

The joint report had suggested the plan of Grand Committees for the purpose of obtaining necessary legislation in relation to reserved subjects for which the Governor was unable to obtain a majority if he relied on the ordinary process. Sub-clause (3) of clause (a) of the Government of India Bill had, accordingly, provided for the Constitution of these Committees on which the Governor was to appoint a majority with power in cases referred to them, to pass or reject laws without the assent of the Council; and sub-clause (4) and (5) provided for the certifying power of the Governor by which the machinery of the Grand Committee was to be brought into operation. The Joint Select Committee on the Bill, however, decided against it.

The extra-ordinary process was embodied in section 13 of the Act which provided that where a Provincial legislative council had refused leave to introduce or had failed to pass in a form recommended by the Governor, a Bill relating to a reserved subject the Governor might certify that the passage of the Bill was essential for the discharge of his responsibility for the subject, and there upon the Bill, notwithstanding that the Council had not consented thereto, was deemed to have been passed and on the signature of the Governor become an Act. To prevent arbitrary exercise of the power of certification the Act provided two Constitutional safeguards.

Firstly, Bill so passed did not receive force and effect as an Act until it had received the assent of His Majesty in Council.
Secondly, an Act made under this was required to be laid as soon as practicable before either of House of Parliament and was not to be presented to His Majesty for assent until copies thereof have been laid before either house for not less than eight days on which the House had sat.

Another extraordinary power was given to the Governor for preventing discussions of legislative proposals likely to imperil public safety or maintenance of order, Clause (4) of section 14 of the Act provided that where a Bill had been introduced, or was proposed to be introduced, or an amendment to a Bill was moved or proposed to be moved, the Governor might certify that the Bill or any clause of it or the amendment affected the safety or tranquility of his province or of an other province, and might direct that no further proceedings should be taken by the Council in relation to such Bill, clause or amendment, and effect was to be given to any such direction.

The Government was empowered in cases of emergency to authorize such expenditure as might in his opinion, be necessary for the safety or tranquility of the Province or for the carrying on any department. No proposal for the appropriation of any revenues or moneys for any purpose was to be made except on the recommendation of the Governor, communicated to the council.

In substance the government of each Province was divided into two parts and the sphere of each part was clearly demarcated. In case of doubt as to whether a particular matter belonged to the reserved or to transferred subjects, the Governor's decision was final.

Last but not the least, the Governor of the province was empowered to appoint in his discretion, Council Secretaries from among the non-official members of the Council. They held office during Governor's pleasure.

b) Role of Governor under the government of India Act. 1935:

There were eleven Governor's Provinces as envisaged by section 64 of the Government of India Act, 1935. Till the Act of 1919, the Government of India strictly speaking had been unitary. The Provinces were more agents of the Central Government. The Act of 1935 went a step further towards the decentralization of

---

10 Those were Madras, Bombay, United Provinces, Punjab, Bihar, Central Provinces and Berar, Assam, N.W. Frontier Province, Orissa and Sind.
powers and conferred a separate legal and constitutional status to the Provinces.

The Governor, as the representative of the Crown, was the head of the Province. He was to be appointed by the King by a Commission under the Royal Sign Manual\textsuperscript{11} and the executive actions of the Province were run under his name.\textsuperscript{12}

In the exercise of his executive authority in the province, the Governor was to be, “aided and advised” by a council of ministers who were collectively responsible to the provincial legislature.\textsuperscript{13}

The Executive functions of the Provincial Government were categorized under the following three heads:\textsuperscript{14}

1. The functions in discharge of which the Governor was required to act on the advice of his Ministers.\textsuperscript{15}

2. Functions in the discharge of which the Governor could act in his individual judgment, that is to say, in discharge of such functions he might consult his ministers but if he disagreed with their view, he could act on his own opinion.\textsuperscript{16}

3. Functions in respect of which the Governor was to act in his sole discretion, i.e. in, such Matters he need not consult His Ministers at all.\textsuperscript{17}

In case of doubt as to whether a given matter fell in one category or another, the decision of the Governor was final and the validity of anything done by him could not be called in question on the ground that he ought or ought not to have acted in his discretion or exercised his individual judgment.

(i) Governor acting on the advice of Ministers:

Majority of the functions of the Governor were to be discharged by him with the advice of his Ministers. These functions mostly included matters administrative details on which the Provincial Legislature had power to legislate either exclusively or concurrently with the federal legislature. But even in such matters certain special

\textsuperscript{11} Section 48 (1)
\textsuperscript{12} section 49
\textsuperscript{13} Section 50.
\textsuperscript{14} Dr. N.V. Paranjape, Constitutional History of India, 1974 p. 149
\textsuperscript{15} Section 50.
\textsuperscript{16} Section 32.
\textsuperscript{17} Section 92.
powers by way of safeguard in the shape of subordination to the Governor-General were given to the Governors of the Provinces.\textsuperscript{18} Thus, the Governor could grant or withhold sanction to the introduction or discuss of a Bill in the Legislature to make ordinances or promulgate Acts,\textsuperscript{19} or could exercise his veto over a Bill passed by a Provincial Legislature or reserve a Bill for His Majesty's pleasure.

(ii) **Governor acting in his individual judgment:**

In certain cases the Governor was empowered to exercise his individual judgment. The most important of these were detailed in section 52 of the Government of India Act, 1935 and included:

a) Prevention of any grave menace to the peace or tranquility of the province or any part thereof;

b) Safeguarding of legitimate interests of minorities;

c) Safeguarding and preserving of the legitimate interests and the rights of the members of the Public Services and their dependents;

d) Securing in the sphere of executive action the purposes which the provisions of Chapter-III or Part-V of this Act designated to secure in relation to legislation;

e) Securing peace and good government of the areas which are declared to be partially excluded areas under the Act or 1935;

f) Protection of the rights and the dignity of the rulers thereof.

g) Securing the execution of orders or directions lawfully issued to the Governor under pan-VI of the government of India Act, 1935 by the Governor-General in his discretion.

(iii) **Discretionary Powers of the Governor:**

The discretionary authority of the Governor extends mostly in the field of execution work. For instance, the Governor was required to act in his discretion in appointment and dismissal of ministers, determination of their salaries, allocation of business among Ministers and the making of the rules for the transaction of the business of the Provincial Government.

\textsuperscript{18} Section 54.

\textsuperscript{19} Sections 88-89.
The Governor also enjoyed certain discretionary authority in the field of Legislation. He could summon, prorogue, or dissolve the Assembly;\(^{20}\) address the Legislative Chamber or Chambers in regard to a Bill under Consideration by them and also send messages in respect of the same.\(^{21}\) He was empowered to remove certain disqualifications for a person to be a member of the Provincial legislature.\(^{22}\) He was to assent to any Bill passed by any provincial legislature or withhold his assent thereto or reserve the Bill for consideration of the Governor-General,\(^{23}\) and also makes rules for the conduct of business in the legislature with consultation to speaker or President of the Chamber.\(^{24}\)

(iv) **Governor's Special Powers:**

The Governor of a Province was given certain special powers under the Government of India Act, 1935. They were:

1) He could enact Governments' Act or suggest draft for the Governors' Act to be passed by the legislature if at any time he felt that a provision be made by legislation for enabling him to discharge satisfactorily the functions entrusted to his sole discretion or at his individual judgement.\(^{25}\)

2) The Power of the Governor to promulgate ordinances was another special power conferred to him by the Act. He could pass ordinances under two circumstances, namely:

   i) When the legislature was not in session and the Governor was satisfied that circumstances existed to promulgate such ordinance\(^{26}\)

   ii) The Governor could also promulgate ordinance with respect to certain subjects which he is required to act in his discretion or to exercise his individual judgement.\(^{27}\)

3) The Governor could, by a proclamation assume to himself all or any of the powers vested in or exercisable by any Provincial body or...

---

\(^{20}\) Section 62.

\(^{21}\) Section 63.

\(^{22}\) Section 69.

\(^{23}\) Section 75.

\(^{24}\) Three discretionary functions of the Governor are merely illustrative and not exhaustive.

\(^{25}\) Section 90.

\(^{26}\) Section 88.

\(^{27}\) Section 89.
authority in case of the failure of the Constitutional Machinery when the
Government of his Province could not be carried on in accordance with the
provision of this Act.28

To sum up, the Governor enjoyed a unique position under the Act. He was
not only independent of his ministry but also independent of the legislature. The
powers exercised by the Governor in his discretion and at his individual judgment
made his position overwhelmingly important. The special powers of the Governor
under the Government of India Act, 1935 were meant to enable him to adopt such
remedies as the case might require to prevent the breakdown and constitutional
machinery in the Province. The Provisions that certain kinds of Bill could not
be introduced in the Provincial Legislature without the previous consent of the
Governor, that his consent was required for the passage of all the bills, that he could
reserve any Bill for the signification by the Governor-General or the King emperor
clearly indicate that the Governor played a dominant role in the executive and
legislative activities of the Province.

c) The Role of the Governor and views of the Constitution Makers:

The memorandum on the principle of a provincial constitution
prepared and circulated by the constitutional adviser on May 30, 1947, set
out of the general constitutional frame work for the Province.29

As in the case Of the Centre, the form of the Government in the
memorandum for the Provinces was, in the main, the parliamentary type in
which administration would ordinarily be in the hands of a Council of Ministers
responsible to the Legislature. In the language of the Government of India Act,
1935, the Governor would he "aided and advised" by his ministers.

But the memorandum also suggested that certain special powers should
be vested personally in the Governor, in the exercise of which he could overrule his
ministers.

28 Section 93.
In so far as special responsibility was concerned, the memorandum proposed that the Governor should at his discretion. Apart from these special responsibilities, the superintendence, direction and control of elections, including the appointment of electional tribunals, were also to be vested in the Governor acting in his discretion, but subject to the approval of a body to be designated the Council of State.

The question about the position of the Governor was debated at length by the Constituent Assembly. The drafting committee gave two alternative regarding the appointment of Governor whether the status should have direct elections of Governor’s or have indirect election. A proposal was moved for this through amendment during debates. Peaking in the constituent assembly in favour of nominated Governor, Pandit Jawaharlal Nehru emphasized the need of the nomination of a person who was above Party Politics and educationist or otherwise an eminent person. He stated that:

“It probably would be desirable to have people from outside eminent people, sometimes people who have not taken too grace a part in politics. Politician would probably like a more active domain for their activities but there may be an eminent education or persons eminent in other walks of life; who would naturally, white cooperating fully. With the government and carrying out the policy of the government, at any rate helping in every way so that policy might be carried out, he would nevertheless represent before the public someone slightly above party and thereby, in fact, help the Government. More than if he was considered as part of party machinery....it is obviously desirable the eminent leaders to use the word for the sake of simplicity: in future of hope we’ll not use the word ‘majority’ and ‘minority’ eminent leaders of groups should have a chance to think they will have a far better chance in process of nomination than in election.”

Shri A.K. Ayyer a prominent member of Drafting Committee, while supporting the system of nominated Governor’s underscored the point that not only the persons of undoubted ability will be selected but the provincial cabined be also consulted.

30 CAD- Vol.IX
To him the Governor was a constitutional head, a sagacious counsellor and advisor to ministry.

Relevant quotation from his speech in the constituent assembly is given below:

“In the normal working of the constitution, to have no doubt that the convention will grow up of the government of India consulting the provincial cabinet, in the election of Governor. If the choice is left to the President and his Cabinet, the President may in, conceivable circumstances. With due regard to the conditions of the province, choose a person of undoubted ability and position in public life who at the same has not been mixed up in provincial party struggle or factions. Such a person is likely to act as a friend and mediator of the Cabinet and help in the smooth working of the Cabinet government in the early stages. The central fact to be remembered is that the Governor is to constitutional head, a sagacious counsellor and advisor to the ministry one who can throw oil over troubled water. If that is the position to be occupied by the Governor, the Governor chosen by the government of India, presumably with the consent of the provincial government is likely to discharge his functions better that on who is elected on a party ticket by the province as a whole base upon the Universal suffrage or by Legislation on some principles of elections.”31

Intervening in the discussion, the Chairman of drafting committee, Dr. B.R. Ambedkar made a significant observation that nomination or election was not the issue: the Governor was to be a person known for his character, education and position in public life, whether elected to nominated, the real issue was regarding the power of Governor. Since, he was in favour of constitutional head, he was for nominated Governor. He said that:

“It has been said in the course of debate that the arguments against election is that there would be rivalry between the Prime Minister and Governor because both driving there mandate from people at large. Taking for myself, that was not the argument which influenced me because I do not accept that even under election there would be any kind of rivalry between the Prime Minister and the Governor, for the simple reason that the Prime Minster would be elected on the basis of policy

while the Governor could not be elected on the basis of policy, because he could not have any policy and having no power. So far as I could visualize, the election of Governor would be on the basis of personality; is he the right sort of person by his status, by his character, by his education, by his position in public to fill in a post of Governor? In the case of Prime Minster, the position would be is the program suitable, is the program right? There could not, therefore, any conflict even we adopt the principle of election.”

“I want to warn the house that the real issue before the house is really not nomination or election, because as I said this functionary is going to be a purely ornamental functionary, how he come into being whether by nomination or by some other machinery is purely a psychological question. What would appeal most to the people, a person nominated or a person in whose nomination the legislature has in some way participated. Beyond that, it seems to me it has no consequence. Therefore, the thing that I want to tell the house is this; that the real issue before the house is not nomination or election, but what power you propose to give your Governor. If the Governor is purely a constitutional Governor with no power than what we contemplate expressly to give him in the act and has no power to interference with the internal administration of the provincial ministry. I personally do not see any very fundamental objection tom the principle of nomination.”

After detail discussion, the constituent assembly decide in favour of appointment of Governor by way of nomination and also decided that the Governor should be appointed by the President by warrant under his hand and seal.

The memorandum contemplated a council of ministers to "aid and advise" the Governor, in so far as functions were not assigned to the Governor in his discretion. The relations between the Governor and his ministers were to be as those between the king and his ministers in the United Kingdom.

The memorandum was discussed by the Provincial Constitution Committee at its meetings held on June 6, 8 and 9, 1947. The proposals were incorporated in the Committee's Report on the Principle of a Model Provincial Constitution, and were placed for discussion before the Constituent Assembly on

---

32 CAD Vol.IX pg
33 Ibid, 22, pp 646-651.
July 15, 1947. The Committee recommended that in the appointment of his ministers and his relations with them, the Governor would be generally guided by the conventions that develop with responsible government; these were to be explicitly set-out in schedule to the Constitution, and replacing the Instrument of Instructions, issued by the Crown under the Act of 1935. But these conventions of responsible government were not to be followed in their entirety; it was provided that the Governor would "act in his discretion" in the following matters:

1) The prevention of any grave menace to the peace and tranquility of the Province or any part thereof;

2) The summoning and dissolving of the Provincial Legislature;

3) The superintendence, direction and control of elections;

4) The appointment of the Chairman and members of the public Service Commission and the Provincial Auditor-General.

The proposals of the Provincial Constitution Committee approved by the Assembly were incorporated in the Draft Constitution prepared by the Constitutional advisor on October 1947.\(^{35}\)

This draft had twelve clauses dealing with the Governor and the Deputy Governor (clauses 111-112) two dealing with the executive authority of the province (clauses 123-124) and two (clauses 125-126) dealing with the Council of Ministers. The Draft also had a Schedule (fifth Schedule) containing an Instrument of instructions to the Governor.

The drafting Committee considered all these views at its meeting held in October, 1948 but decided not to make any change in its proposals as embodied in the Draft Constitution of February, 1948. “The Committee seemed to prefer that decision be left to the Constituent Assembly to choose between the various alternative courses suggested.”\(^{36}\)

Article 143 and 144 of the Draft Constitution contained provisions about the Council of Ministers in a State. Article 143 had three clauses.\(^{37}\) The first clause declare that there would be a Council of Ministers with the Chief Minister at the

---

\(^{35}\) Ibid, III I (i). pp. 44-50.


\(^{37}\) Selected documents III.6, p.56.
head to aid and advise the Governor in the exercise of his functions except in so far as he was by or under the Constitution required to exercise any of them in his discretion. The other two clauses laid down the following similar provisions in the Act of 1935, that

a) If any question arise whether any matter was or was not one as respects with the Governor was required to act in his discretion; the decision of the Governor in his discretion would be final;

b) The validity of anything done by the Governor would not be called in question on the ground that he ought or ought not to have acted at his discretion;

c) The question whether any or if so, what advice was tendered by the Ministers would not be inquired into any court.

Under the Government of India Act, 1935, from which these provisions were borrowed, the Governor acted in subordination to the Governor-General in the exercise of his discretionary powers; and the Governor-General himself function in subordination to the Secretary of State for India. Thus the ultimate responsibility for these matters rested in the British Government which was responsible to the British Parliament. But in the scheme as contemplated in the new constitution, there was no proposal to make the responsible to any one for the exercise of his discretionary powers.

The Constituent Assembly, however, changed this plan. The result was that, as it emerged from the Constituent Assembly, the discretionary powers become exercisable not for certain purposes but in relation to specific functions. Adopting this plan, the draft constitution specified, in various articles distributed over different parts of the Constitution, certain matters as those in which the Governor would be required to act in his discretion. These were:

1) Appointment and dismissal of his ministers (Art. 144(6).

2) Summoning of the Legislature and dissolution of Legislative Assembly (Art.153)

38 See, Supra. The Role of Governor under the government of India Act, 1935.
3) Power to return to the Legislature for reconsideration a Bill submitted to his for his assent (Art. 175).

4) Issue of a proclamation in an emergency superseding his ministers and assume to himself executive functions (Art. 188).

5) Appointment of the Chairman and Auditor-in-Chief (Art. 210).

6) Appointment of the Chairman and Members of the Public Service Commission (Art. 285).

Dr. Ambedkar, the Chairman of the Drafting Committee, stated categorically, when the question of choosing the Governor was under consideration, that the Governor should not exercise any functions in his discretion and that according to the Principles of the Constitution he would be required to follow the advice of his ministry in all matters. When Article 143 was under consideration H.V. Kamath moved an amendment seeking to delete the reference to the exercise of such discretionary functions; and Rohini Kumar Choudhary drew pointed attention to Ambedkar's statement made earlier that the Governor would be merely a symbol. But Ambedkar adopted a stand on the article which was not quite consistent with his earlier statement. He maintained that "the retention" or vesting the Governor with certain discretionary powers is no Sense Contrary to or in no sense a negation of, responsible Government, and on this argument- basing his stand also on precedent in Canada and Australia he opposed Kamath's amendment.

The Constitution when finally adopted full ministerial responsibility without any discretionary powers for the Governor was established over the whole field of State Administration. The only matter in which the Governor would act independently of his ministers was in relation to certain tribal areas in Assam where, for a transitional period, the administration was made central responsibility and the Governor was to act as the agent of the Central Government. But inspite of this radical can in the contents of the power of the Governor, no change was made in draft Article 143 and reference to the Governor exercising certain functions in his discretion still remains. At the revision stage the article was numbered 163.

39 See, Views of constitution-maker regarding appointment of Governor infra
40 CAD, Vol. III. p.467-468
41 Ibid. pp, 489-502.
Draft article 144 provided for various matters relating to the Council of Ministers. It laid down that the ministers would be appointed by the Governor in his discretion and would hold office during the Governor's pleasure. When Article 144 was discussed in the Assembly on June, 1949, several points were raised.

Dr. Ambedkar on behalf of the drafting Committee moved an amendment that the Chief Minister would first be appointed by the Governor and other ministers appointed on the advice of the Chief Minister; that the Ministers would hold office during the pleasure of the Governor, and that the Council of Ministers would be collectively responsible to the Legislative Assembly of the State.\footnote{Ibid, p. 503.} He also moved another amendment deleting the requirement that appointment of the Ministers would be made by the Governor in his discretion.\footnote{Ibid, p. 507.} These amendments were adopted by the Assembly without much discussion. But certain other amendments which were moved evoked considerable discussion. Mohammed Tahir and Mohammed Ismail Sahib wanted it to be specifically stated that Ministers could remain in office only so long as they retained the confidence of the legislature; the Governor should not be placed in a position in which he could permit to remain in office persons who had forfeited the confidence of the Assembly. Tahir said:

"It may happen that the members of the Legislative Assembly may not have confidence in the ministers, but at the same time, though long association with the Governor, the Ministers may enjoy the pleasure of the Governor quite all-right. I warn that the hand of the Governor should be made stronger so that if he finds that over and above the question of his pleasure, if the Ministers have not got the confidence of the Assembly, the Ministry should be dissolved... Therefore, I submit that if the Governor finds that the Ministers do not enjoy the confidence of the House in that case also, he should ask them to vacate the office and get the Ministry dissolved."ootnote{Ibid., pp. 503-4.}

Tahir also moved an amendment to prohibit the appointment as a Minister of any one who was not already a member of the legislature;\footnote{Ibid., p. 505.} and Shibbal Lal Saxena wanted all Ministers to be members of the Legislative Assembly; it would be
undemocratic that a minister should be a person who could not win an election by adult franchise.\(^{46}\) H.V. Kamath backed by K.T. Shah, again sought to introduce the principle that any person appointed as a minister should declare his assets.

Summoning up the views of the Drafting Committee on these amendments, Ambedkar opposed all of them. There was agreement on all hands that it was the intention of the Constitution that Ministers should hold office only during such time as they commended the confidence of the Majority in the Assembly. This was not expressly stated in the Constitution because such a provision was not made in other Constitution providing for a Parliamentary system of Government. The words 'during pleasure were, Ambedkar said, always understood to mean that the ‘pleasure' should not continue when The Ministry had lost the confidence of the majority; and the moment the Ministry lost the confidence of the majority the Governor would use his 'pleasure' in dismissing it.

Dealing with the suggestion that all Ministers should be members of the Legislative Assembly; Ambedkar explained that the Scheme of the Constitution was that the Governor could select his ministers from the lower as well the upper house or the Legislature; and the amendment restricting the choice to members of the Lower House could not therefore he accepted.

He also opposed the amendments of K T. Shah and H.V. Kamath requiring the Governors and Ministers to make disclosures of their assets.\(^{47}\)

T.T. Krishnamachari moved an amendment to delete the whole schedule to the Drafting Constitution containing the instrument of Instructions to the Governor. Explaining the reason for this proposal, he said that it had been decided that these matters, affecting as they did the relations of the Governor with his ministers, should be left entirely to convention. Elaborating the argument further, Ambedkar pointed out that the discretion left with the Governor is very meagre. The Constitution itself required him act on the advice of his Chief Minister did not propose to include in his cabinet members of a minority community, there was nothing which the Governor could do. Ambedkar made further point that in the past the Viceroy or the Governor to whom these instruments were given was subject to the authority of the

\(^{46}\) Ibid. p. 505-6.

\(^{47}\) Ibid., pp. 520-1.
Secretary of State and could be removed for persistent refusal to carry out the Instrument of Instruction issued to him. But under the Constitution of India there was no functionary who could ensure this happening.\textsuperscript{48}

The proposal for the deletion of the schedule was adopted by the Assembly and as a consequences clause (4) of Draft Article 144 authorising these instructions was also omitted.

(d) \textbf{The Role of Governor in U.S.A., Canada and Australia - a brief reference:}

(i) \textbf{In U.S.A.}

In this enlightening examination of the development of the office of the Governor. Leslie Lipson has observed that "in order to render service, democracy must possess power and structures which equip it for action."\textsuperscript{49} Action in the sense of accomplishing the goals and purposes of a Governmental Unit is a responsibility of the executive.

State laws set-forth the formal requirements providing that gubernatorial candidates shall be nominated by convention or direct primary and elected by the vote of people in a general election. However, complications arise in any effort to describe in detail the entire procedure involving in choosing Governors because of 'the variety of patterns. In the party processes which lie behind the legal pattern and which actually determined who is selected as the gubernatorial candidate of a given party.\textsuperscript{50} The nominating process is a combination of the procedures required by law and informal System developed by parties over a long period.

Although the Governor of a State is designated as 'Chief Executive’, he is only part of the executive. There are many other parts to it. Each State Constitution indicates that the Governor is the superior officer of the executive branch and also lists certain powers and responsibilities associated with his office.

\textsuperscript{49} Leslie Lipson, The American Governor, From Figure head to Leader, University of Chicago Press, 1939, p. 1
\textsuperscript{50} Coleman B.Ransone, Jr., The Office of the Governor in the United States, University of Alabama Press, 1956, p.4.
The Role of the Governor in Legislations:

The laws of each State provide for certain specific, formal procedures through which a Governor is empowered to affect the deliberations and the actions of the Legislature. These formal or 'constitutional' procedures are usually classified into three major categories: a) Presentation of messages; b) Calling special sessions; and c) Use of the veto.

a) Presentation of Messages:

Governors customarily present a message to their legislatures at the beginning of each regular session. Such a message is designated to "orient" the legislators with regard to the conditions of the States, major problems and executive proposals designated to meet the need of the State. In most of the States the general message are soon followed by a budget message, which is usually more significant in its effect on Governmental policy.

b) Calling Special Sessions:

Each State Constitution empowers the Governor to call special or extraordinary sessions of the legislature. This power rests exclusively with the Governor, but in Connecticut, Massachusetts and New Hampshire special sessions may be called by the members of the Legislature.

c) Use of Veto:

The Governors of all State except North Carolina are granted the Veto power by their respective constitutions. Where the Veto power exists, a Governor has open to him three courses of action when a Bill is sent to him: he may sign it; he may veto it; he may do nothing. If he sign the Bill, it becomes law immediately or at some future date specified in the Act. If the veto is applied, the Governor must return the Bill to the house along with his objections. In all State the Legislature may override veto, a course of action requiring some extra-ordinary majority in most States- usually two-thirds of the members of each House.

51 Ibid.
The consequences of no gubernatorial action vary among the States. In addition to the three courses of action open to the Governors of most States when Bills are sent to them, the Governors of four States possess an alternative commonly referred to 'Executive Amendment'.

**Ordinance Making Powers of the Governor:**

This power to 'fill in details' of legislation by issuing rules and regulation is possessed by most Governors on a limited scale.

In some cases, exercise of the ordinance making power of the Governor rest upon constitutional provisions rather than upon statutes. As Commander-in-Chief of State Military forces, for example, a Governor may issue rules and orders that are not based upon statutory authorization. Similarly, the typical constitutional directive that a Governor “take care that the laws be faithfully executed” is sufficient legal basis for the issuance of rules and orders controlling or directing various aspects of administration.

**Military Powers of the Governor:**

In very State the Governor is commander-in-chief of the military or national guard unless it has been 'nationalized' to enforce national and prevent violence. When the President 'call up' a State unit of the national guard, it ceases to be under State jurisdiction and becomes integral part of the Military force of the United States. The United States Supreme court has indicated that the national constitution imposes certain restrictions on the free exercise of Military power by a State Governor.

During World War I and II, many State Legislatures granted Governors extra-ordinary powers to protect the States and their residents in 'emergency' situations. Also most State have extended to their Governors special powers with regard to making necessary arrangement for civil defense. Considered collectively the Military powers of the Governors are not significant in the conduct of the State Government except in troubled times.

---

52 These four states are Alabama, Massachusetts, New Jersey and Virginia

53 Starling v. Constantin, 287 V.S. 378 (1932)
**Judicial Powers of the Governor:**

American Governors exercise a variety of powers of a judicial nature, including the granting of pardons, commutations, reprieves, paroles and authorizing rendition. With the exceptions of Parole and rendition these actions are usually referred to as "Executive Clemency". A Pardon is a release from the legal consequences of a Crime. Sometimes conditions are attached to a pardon; if the recipient violate them, the pardon is void.

A commutation is a reduction in sentence. Through the exercise of this power the Governor may, for example, change a sentence from death to life imprisonment. A reprieve is a postponement in the execution of a sentence, usually for a period of few hours or as much as thirty days.

A parole is a conditional release of a person who has served part of the term for which he was Sentence to prison. Rendition or extradition involves the return of a fugitive from justice to the State where he has been accused of a Crime by order of the Governor of the State to which he had fled. Although Governors seldom refuse to "deliver up" such a person as provided by the united States Constitution, it is their responsibility under federal law to review each such request and decide on the course of action taken.\(^5\)

A Governor may spend long hours hearing arguments on both sides before he makes his decision, an action that is definitely judicial in nature.

(ii) **In Canada:**

Canada is governed by B.N.A. Act, 1867. In Canada the Constitutional head of the Provinces is known as Lieutenant-Governor.

Before the passing of the B.N.A. Act, 1867 the Lieutenant-Governor was appointed for the Canadian Provinces by the British Crown with the advice of the British Cabinet. But Section 58 of the B.N.A. Act taken away the prerogative of the British Crown to appoint Lieutenant-Governors of the Canadian Provinces with the advice of the British Cabinet and instead, provides for such appointment by the Governor-General-in-Council i.e. by the Governor-General.

\(^5\) In *Kentucky V. Dennison*, 20 How. 66 (1861), the Untied States Supreme Court ruled that the obligation to render a fugitive is a moral one that a Governor cannot be compelled to perform.
acting with the advice of the Dominion Ministry.  

But though the Lt. Governor of a Canadian Province is appointed by the government, it has been held by the Court that the Lt. Governor is not the executive servant of the Dominion on the Province instrument of the Dominion cabinet. Once appointed, he is the full representative of the crown, having complete authority for the carrying on the government of the Province. So, the mode of appointment of the Provincial executive head does not impair the federal principle of Canada. Same is the position in India. The government the Lieutenant Governor are appointed for indefinite period but cannot be removed within a period of five years from the time of there initial appointment unless cause is specified.

For the most part such appointments are given to men who have actively served the political party in power and consequently are deserving of reward at its hands—even though, after office is assume, appointees must each a political activity. Lieutenant-Governor reside at ‘government houses’ in the capital of the Province to which they are appointed, receive fairly attractive salaries and allowances, and are much in public eye in connection with formal occasions.

However, they have little actual authority in running of the government. The Lieutenant-Governor is bound by the convention that he must appoint as his minister only such person as can command a majority in the provincial legislature. But it has been suggested that the office be abolished and its duties assigned to the Chief Justice of the Provincial Supreme Court.

(iii) In Australia:

The Governor of an Australian Slate is appointed by the Crown on the advice of the British Cabinet who, however, in practice, consult the Prime Minister

---

56 In Liquidators of Maritime Bank v. Receiver General (1892) A.D. 437 (443).
57 Cf. Kennedy, Some aspects of Constitutional Law, p. 79; Clement Canadian Constitution, p.27; Dowson, Government of Canada, p. 37.
58 See Ch. 2 of this dissertation relating to appointment of Sate Governors.
59 Jacob Zink, Modern Governments(3rd Ed.) 1966, p.639.
61 Jacobs Zink, op.cit., p. 640.
of the State concerned like the Governor-General himself, the Governor of a State holds office during pleasure of the Crown. The Governor cannot be removed by the Governor-General and has no responsibility to the latter. The section 110 of the Commonwealth of Australia Constitution Act 1900 is a self explanatory. The powers conferred by the Constitution on the State Governor including the power to issue writs for the election of Senators and fill vacancy in the Senate are exercisable by the Lieutenant-Governor or administrator of the State. In India there are no such provisions for the office of the Deputy-Governor as it provides in the Australian Constitution.

The power to the issue of writs for the Senate is vested in the Governor of the State. The form of the writ is prescribed in schedules to the Commonwealth Election Act and Senate Elections Act. No time is fixed for the issue of the writs except in the case of dissolution of the Senate under section 57 when they must be issued within ten days from the proclamation of dissolution. It was held by the Court that section 12 empowers the Governor of a State to issue writs whenever vacancy occurs. In the Case of periodical elections this would be governed by the time at which the term of the retiring senators due to expire. The Sue of the writ by a State Governor in the form laid down by the Commonwealth legislation would he an act taken on the advice of the federal ministry, which would therefore, determine the time of polling.

---

62 NicChilas, Australian Constitution, p.20.
63 Basu’s, op.cit., p.256.
64 See, Section 12.
65 See Section 15.
66 In Vardon v. O'Loghlin 5 C.L.R.