CHAPTER II

APPOINTMENT AND DISMISSAL OF GOVERNOR-
A LACK OF HEALTHY CONVENTION

a) Introduction:-

Indian Constitution is a written constitution. A written constitution may also raise a number of problems as they arise in the countries which have unwritten constitutions. Although India has a written constitution but regarding the appointment of Governor the constitution only provides some qualifications\(^1\) and declare that the Governor shall be appointed by the President.\(^2\) But there are certain problems of Constitutional importance relating to the appointment of Governor which are left by the Constitutional framers to be fulfilled by conventions\(^3\) to grow in future.

Every State has a Governor. It is however, possible to appoint one person as the Governor of two or more States.\(^4\) The President acts in the matter of appointment of the State Governor on the advice of the Prime Minister with whom, therefore, the effective power lies in this regard. The constitution gives a carte blanche to the centre in the matter of appointment of a State Governor. But since the Governor has a dual capacity, he is the head of the State as well as the representative of the Centre in the State. It has been realized that with a view to increasing the smooth functioning of the constitutional machinery in the State it would be best to consult the State Chief Minister while appointing the Governor, and a convention has grown accordingly.\(^5\) So long as there was one party rule at the centre as well as in the States.

The constitution was merely a formal affair and no difficulty ever arose in the matter of appointment of the Governor. But after the Fourth General elections

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\(^1\) These qualifications are: No person shall be eligible for appointment as Governor unless he is a citizen of India and has completed the age of thirty-five years. See article 157. For conditions of Governors office see article 158.
\(^2\) See Article 155.
\(^3\) The term 'convention' has been accepted largely through: the influence of Dicey. Law of he constitution,10th ed. Chap.XIV and see Introduction, pp.cli to cxci.
\(^4\) Article 153.
held in February 1967, appointment of Governors has become a somewhat controversial matter, particularly in those states where the political complexion of Government differ from that of the Centre. Therefore, certain questions of constitutional importance arose as to what were the proposed methods before the Constituent Assembly, why direct election and panel system rejected, why nomination accepted and moreover how far the system of nomination has fulfilled the hopes of the framers of the Constitution and finally, what suggestions were made by eminent persons, all are answered in this chapter in the following orders.

b) Proposed Methods Before Constituent Assembly regarding appointment of governor:

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.”

6 CAD Vol. IX
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 cabinet be also consulted. 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.”

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

7 Ibid.
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 Minister 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 Minister, 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."\(^8\)

After detail discussion, the constituent assembly decides 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.

According to Article 155 of the Constitution, the Governor of the State is to be appointed by the President by warrant under his hand and seal. It may be noted here that according to the "Principles of the Model Provincial Constitution" as adopted by the Constituent Assembly, the Governor was to be elected directly by the people on the basis of adult franchise.\(^9\) Subsequently,

\(^8\) CAD Vol. IX.
this matter was discussed by the Drafting Committee, some of the members were of the opinion that "the co-existence of a Governor, elected by the people and the Prime Minister responsible to the legislature might lead to friction and consequent weakness in administration."\textsuperscript{10} Therefore, they proposed that the Governor of the state should be "appointed by the President under his hand and seal from a panel of four candidates to be elected by the members of the Legislative Assembly of the State or where there is a Legislative Council in the State, by all members of the legislative Assembly and of the legislative council, assembled together at a joint meeting, in accordance with the system of proportional representation by means of the single transferable vote."\textsuperscript{11} But later on, the "special committee considered the mode of selection of Governors and was of the view that the Governor should be directly appointed by the President and that it was not necessary to provide for a panel of candidates for such appointment."\textsuperscript{12}

Therefore, it is clear that when Article 131 of the Draft Constitution was discussed by the Constituent Assembly, it had the following three proposed methods before it for the appointment of the Governor:

i) Direct Election

ii) Panel System

iii) Nomination

c) Grounds for the rejection of Direct Election:

It is not that the member of the constituent assembly did not take notice of the perversions of being made to go on the statute book yet the majority supported the official view and stultifying factor were imported in the constitution. Professor Sibban Lal Sakesna took a strong objection to the proposal of making the Governor an agent of the central govt. He said that a Governor appointed by the central government would upset the fundamental equilibrium between the center and the states and would result in the concentration of power in center.\textsuperscript{13}

\textsuperscript{10} Ibid., Vol.III p.482
\textsuperscript{11} Ibid.pp.482-83
\textsuperscript{12} Ibid. Vol. IV p.68.
\textsuperscript{13} CAD, Vol.VIII. PP.450-452.
Biswanath Das also took cudgels against the proposal and said that it was quite likely that different political parties would come to rule at the center and the province and than the former, tough the Governor nominated by them, would use him to grind their axe.\textsuperscript{14}

The official opinion, however, did not agree to the above view. Alladi Krihna Swami Iyer advanced argument for a nominated Governor. He said that the election of Governor in parliamentary system of government was not only unnecessary but also dangerous because a constitutional crisis of a great magnitude might take place if the elected Governor overruled the advice of his ministry.\textsuperscript{15} According to him, a Governor nominated by the government of India would more effectively fulfill the role of a counsellor to his ministry and provide a close link between the center and the provinces. Pt. Nehru supported Iyer’s view and expressed his apprehension about conflict and confrontation coming the above views suffered from squint-eyed and oblique view and did not spare up with the parliamentary system. While one was loaded with the possibility of a popularly elected between the Governor and his ministry if former was elected. He said “…that would to some extent encourage the separatist provincial tendency more than otherwise”\textsuperscript{16} Both of Governor seeking to assert himself, would overrule the advice of his ministry creating a stalemate and breakdown, the other was equally perverse because being a nominee and agent of the central government he was bound to act according to their political convenience, against the advice of his ministry. The constituent assembly rightly rejected the idea of an elected Governor nominated by the central government. The proposal that Governor should be directly elected by the people on the basis of universal adult franchise was rejected on the following grounds:

i) As the real powers are vested in the Chief Minister and his cabinet, the outstanding persons in the political life of the State, would prefer to be Ministers and not Governors. Consequently, the party in power at State level would put only second rate persons for election to the office of the Governor and the Governor would be the nominee of the Chief Minister.

\textsuperscript{14} Ibid. P.455
\textsuperscript{15} Ibid. P.430-32
\textsuperscript{16} Ibid. P.445.
"The expenditure and energy of a Province under election would have been wasted in putting second rate man in the party at the head of the Government."17

ii) Founding fathers wants that the head of the State should be above the party politics. Therefore, it was pointed out that one of the essentials of the successful cabinet Government in a Province or in the country as a whole was the existence of a fairly impartial constitutional head. If the Governors were to be elected by the direct vote of all voters in a province, the Governor was. likely to be a party man for the election would be on party lines.18

iii) While framing the constitution, framers have in their minds, interest for the leaders of minority groups. They were of the view that if the election system is adopted the minority leaders will not be able to get the office. According to Jawahar Lal Nehru, "It is obviously desirable that eminent leaders of minorities will have a far better chance in the process of nomination then in election."19

iv) It was also pointed out that it "would be desirable to have people from outside eminent people... while cooperating fully with the Government and carrying out the policy of Government, at any rate helping in every way so that that policy might be carried out, would nevertheless represent before the public some one slightly above party and thereby in fact, help that Government more than if he was considered as part of the party machine."20

d) **Grounds for the rejection of Panel system:**

In the constituent Assembly, 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.

17 KM. Munshi, CAD. Vol VIII. p.452.
18 CAD. Vol. VIII. p.428.
19 Ibid., p.456.
20 Ibid., p.455
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 to the principle of nomination.”

The method for the appointment of Governors proposed was the Panel system. Some of the members of the Constituent Assembly suggested that the President shall appoint the Governor out of a panel of three or four persons elected by the State Legislature on the basis of a proportional representation by means of a single transferable vote system.
But this panel system was also rejected on the following grounds:

i) Framers of the Constitution were of the view that if the panel system is adopted it will lead to the friction between the Legislature and Governor at the one hand and on the other hand between the Central Government and the Provincial Government.

ii) It was also felt that in the interest of All-India Unity, and with a view to encouraging centripetal tendencies, it was necessary that the authority of the Government of India should be maintained intact over the Provinces. To say that the President may nominate from a panel of names really means restricting the choice of the President. It is only for this reason it was contended that the choice of the President should be unrestricted and unfettered.21

e) Grounds for the acceptance of nomination:-

Under the resolution which was adopted in April, 1947, the Constituent Assembly of India authorised the appointment of the 'Provincial Constitution Committee' to submit its report on the main Principles of a Model Provincial Constitution.22 Since then the framers of the Constitution adopted the idea of setting up "a minimum Federation with a weak Centre"23 for, under the Cabinet Mission's Plan of May 16, 1946, some general restrictions and conditions were laid down under which the provinces were to have “a large measure of autonomy”, all the subjects other than foreign affairs, defence, communications, being vested in them.24

Keeping in view the restrictions imposed by the Cabinet Mission Plan of 1946, the Provincial Constitution Committee in its meeting on May 5, 1947, decided to circulate to the members a self-contained memorandum which might serve as a basis of discussion on the Principles of a Model Provincial Constitution. But this, however did not prove successful. Only-seven members out of twenty five members of Provincial Constitution Committee conveyed their views to Shri B.N. Rau on the

21 Brijeshwar Prasad, Ibid., p. 426
23 Santhanam, K., Union-State Relations in India (Bombay, Asia, Publishing House, 1963), p. 60.
subject in the form of replies to the questionnaire. In these circumstances it was not possible to prepare a memorandum embodying the majority view of the Provincial Constitution Committee.

The constitution Adviser, Mr. B.N. Rau, thereafter, submitted an independent memorandum prepared by himself to the Provincial Constitution Committee on May 30, 1947, in which he proposed that the Governor should be elected by the Provincial Legislature by a secret vote according to the system of proportional representation by the single transferable vote.

Further, in the meeting of the Provincial Constitution Committee held on June 6, 1947, the Provincial Constitution Committee discussed the matter of the appointment of the Governor-envisaged in the draft memorandum. Some members of it were of the view that the Governor should be elected by the people on a system of adult franchize, while another group of members was of the view that the Governor being a constitutional head, should be appointed by a system of indirect election. Some other members suggested that for the functioning of the Governor as "a liaison between the Central Government and the Provincial executive", the Governor -should be nominated by the Central Government. The Committee, however, decided that the matters of common interest to the -Union as well as -the -Provincial Constitution Committees. should be discussed in the joint meeting of both the committees.

On June 7, 1947, the joint meeting of the Union Constitution and the Provincial Constitution Committees was held in which the following conclusions were taken up:

A. There should be a Governor as the bead of every Province.

B. The Governor should be appointed by the Province and not by the Central Government.

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25 See: The Minutes of the Meeting vide B. Shiva Rao., op. cit., Vol. 11, p. 645-46 (Patel was elected as the Chairman of P.C.C.) Ibid p. 645.
28 Ibid, p. 609.
C. The Provincial executive should be of the Parliamentary Cabinet type.

D. The Governor should be appointed by indirect election on the basis of adult franchise through a special electoral college.

At its meeting held on June 11, 1947, the Provincial Constitution Committee decided the following things with regard to the office of the Governor

“(a) that there should be direct election on the basis of adult suffrage;

(b) that the duration of the office of the Governor should be, coterminous, with the life of the Legislature, viz. four years; and

(c) there should be simultaneous election with the election of the members of the Lower House.”

The Chairman of the Provincial Constitution Committee Sardar Patel at last submitted its report on June 27, 1947 under the title of a “Memorandum on the Principles of a Model Provincial Constitution”, which was finally submitted to the Constituent Assembly on July 15, 1947.

In this ‘Memorandum of the Principles of a Model Provincial Constitution’, it was provided that “for each Province there shall be a Governor to be elected directly by the people on the basis of adult suffrage.” But the Committee was of the opinion that the election of the Governor should, as far as possible, synchronize with the general election to the Provincial Legislative Assembly, although it was admitted that it would be difficult to provide by Statute, because the Legislative Assembly, might be dissolved in the middle of its term.

Shri B.G. Kher, further commented on the Clause I of the Memorandum that synchronization of the general election and the election of the Governor would be problematical because if the Assembly was dissolved before its term, then the Governor might have to be elected in middle of the term of the Assembly. He suggested that synchronization could be secured by providing that the Governor

should resign after each dissolution but it was his fear that if it was so done by law, the Governor might be reluctant to dissolve the House when he was asked by the Chief Minister.\textsuperscript{33}

The Provincial Constitution Committee further recommended in its Memorandum that casual vacancies in the office should be filled in by the Provincial Legislature with the system of proportional representation by means of a single transferrable vote. Further in case of the Governor's absence from his duty or incapacity or failure to discharge his functions, the President of the Federation might appoint a person for a period not exceeding four months to discharge the functions of the Governor.

When the first three Clauses of the Memorandum were under discussion in the Constituent Assembly on 16th July, 1947. Pandit Govind Ballabh Pant moved an amendment to create the post of Dy. Governor in every Province. He said in the Assembly:

“It is likely that the Governor may have to go abroad for important public business, that he may be deputed for diplomatic services of an important character for short period or he may be required to perform other duties for a limited period which may not allow him to discharge his normal functions. For such occasions we should have Dy. Governor to take his place”.\textsuperscript{34} This amendment later on, was accepted by the Constituent Assembly.\textsuperscript{35}

Thus, the Constituent Assembly accepted the principle of an elected Governor and deleted the idea of nominated Governor by, the Central Government. Shri Govind Ballabh Pant while defending his amendment opined that the idea of nominated Governor by the President of India would be “an embarrassing duty” for the President of the Federation. Besides it would be, repugnant to the principle of provincial autonomy.\textsuperscript{36}

\begin{footnotesize}
\begin{enumerate}
\item Shiva Rao., B., op. cit., Vol., 11, p. 663.
\item Vide Clause 3(1) & (2) of the Memorandum, Ibid.
\item The Constituent Assembly Debates, Vol., IV, p. 610.
\item Ibid p. 610.
\item Ibid.
\end{enumerate}
\end{footnotesize}
The Constituent Assembly, after reviewing the Memorandum thoroughly, adopted the Principles of a Model Provincial Constitution on July 17, 1947.\textsuperscript{37}

The following were the main features of the Provincial Constitution relating to the appointment of the Governor adopted by the Constituent Assembly.\textsuperscript{38}

(i) The Governor should be elected directly by the people on the basis of adult suffrage, and hold office for a term of four years, except in the event of death, resignation and removal. Further he would be liable to be “removed from his office for stated misbehavior by impeachment, the charge to be preferred by the Provincial Legislature, or where the Legislature was bicameral, by the Lower House of the Province and to be confirmed by the Upper House of the Federal Parliament after investigation by a special committee of the House, the resolution in each case to be supported by not less than two-third of the total membership of the House concerned”.\textsuperscript{39}

(ii) It was provided that there would be a Deputy Governor for every Province who would be elected by the Provincial Legislature with the system of proportional representation by single transferrable vote, after every general election. He would fill a casual vacancy in the office of the Governor on the absence of the latter.\textsuperscript{40}

Thus, in the initial stage of framing the Constitution, the framers of the Indian Constitution decided that the governor should be elected directly by the people on the basis of adult suffrage, for it was their impression that an elected Governor would give stability to the Government of the Province.\textsuperscript{41} This decision was in conformity with the idea of giving each State the “maximum autonomy” as a unit of the Federation.\textsuperscript{42}

\textsuperscript{37} Ibid p. 646.
\textsuperscript{38} See : B. Shiva Rao, op. cit., Vol., II, p. 667-68.
\textsuperscript{39} Clause 2(2) of a Model Provincial Constitution, Ibid, see also, CAD, Vol. 4, p. 593.
\textsuperscript{40} Clause 3, Ibid, p. 668.
Meanwhile the political situation of the country abruptly changed when the partition of the country became a certainty and the restriction and limitation expressed under the Cabinet Mission Plan on the authority of the Constituent Assembly disappeared from August 15, 1947.\textsuperscript{43} This change as such retained the supremacy of the Constituent Assembly. As the result of this change the scheme of a loose Federation under the Cabinet Mission Plan, however, withered away from the Indian scene and the framers underlined the need of “a strong Central Government”.\textsuperscript{44} More over, this change removed the Muslim League from the Indian scene which acted as a sort of a counter-balancing political factor in this country. Further, the communal riots and refugee influx after the independence of India, the problem of merging the native States into the Federation of India compelled the members of the Constituent Assembly to give up the idea of a Federation of autonomous units. They, therefore decided to make India “a Union of States”.\textsuperscript{45} These factors impressed the members for altering radically the provision of the appointment of the State Governor.\textsuperscript{46}

Further, when the Draft Constitution relating to the appointment of the Governor came for discussion in the Draft Committee, the divergent opinions were expressed by the members. On the method of choosing the Governor, it was then realized by some of the members of the Committee that the co-existence of Governor elected by the people and a Chief Minister responsible to the Legislature might lead to a friction between the Governor and the Chief Minister of the Province. This would make the administration of the Province weak. The Committee, therefore, suggested an alternative method of appointing the Governor. It was of the view that the Governor should be appointed by the President of the Union out of a panel of four persons elected by the method of proportional representation by means of single transferable Vote.\textsuperscript{47}

\textsuperscript{43} Shiva Rao, B., op. cit., (A Study), pp. 385-86.
\textsuperscript{44} Kaushik, P.D., ”The Constituent Assembly and the Governor”, Journal of the Society for Study of State Governments, (Varanasi Vol., IV, No. 3 & 4, July-December, 1971) p. 247. See also Santhanam, K., op. cit., p. 60.
\textsuperscript{45} Ibid, p. 247.
\textsuperscript{46} The Draft Constitution was prepared by the Drafting Committee and submitted to the Constituent Assembly on February 21, 1948. The Draft Article 131 was related to the appointment of the Governor. B. Shiva Rao, op. cit., Vol., III, p. 564.
\textsuperscript{47} Ibid, p. 546. Also see, Gadgil, D.R., some observations on the Draft Constitution, (Poona, The Gokhale Institute of Politics and Economics, 1948) p. 52. This suggestion was also made by the
After this the Special Committee in its meetings of April 10 and 11, 1948 came to the conclusion that an elected Governor would be 'completely useless' for controlling the administration of the Province. It was then realized that an elected Governor having the prestige from the public might seek an emergency to override his Ministry's advice. It also thought that the presence of two persons elected would lead to a very piquant situation in the Provinces. The Committee recommended that the Governor should be appointed directly by the President of India. After the meeting of the Committee on October 18, 1948, Dr. Ambedkar did not accept the recommendation of the Special Committee for the change in the appointment to be decided by the Constituent Assembly itself.

By this time the framers of the Constitution had undergone enough experience of the administration during the course of two years (1947-49) when they met on May 30, 1949 for discussing the draft Article 131 of the Draft Constitution. They discussed thoroughly the following four alternatives for selecting the Governor of the Province.

(i) Election by adult suffrage.

(ii) Election by the members of the Lower House or both Houses of the Provincial Legislature either by the system of proportional representation or otherwise.

(iii) Selection by the President of the Union out of a panel submitted by the Lower House of the State Legislature, and

(iv) Appointment by the President of India.

The first three alternatives were rejected. The last alternative i.e. the amendment moved by Shri Brajeshwar Prashad was accepted. The amendment was deemed essential for preserving the unity and integrity of the country.

Draft Committee. See the comments and suggestions on the Draft Article 131, Ibid, pp. 68-70.
48 For a detailed study, see : the Minutes of the Meetings of the Committee, B. Shiva Rao., op. cit., Vol. IV, p.40.
49 Ibid, pp. 415 -16.
50 For the Draft Article 131, he moved the amendment: "The Governor of State shall be appointed by the President by warrant under his hand and seal", C.A.D., Vol., 8, p. 425.
Shri Brajeshwar Prashad was of the view; "in the interest of All India Unity with a view to encouraging centripetal tendencies, it is necessary that the authority of the Government of India should be maintained over the Provinces."\textsuperscript{51}

He further opined that the selection of the Governor from a panel of names would restrict the free choice of the President of India. He wanted that the President should be free from the influence of the Provincial Legislature. He also wanted that the man from the same Province should not be appointed by the President as the Governor of that Province because it would give ‘encouragement to fissiparous tendencies’. He, therefore, wanted that the choice of the President should be "unrestricted and unfettered" while selecting the Governor for any Province of the Union.\textsuperscript{52}

Shri H.N. Kamath while supporting the amendment was of the opinion that in a Parliamentary form of Government, It is obvious that the method of choice by direct election is absolutely inappropriate and unacceptable. He further stated:

“If the Governors were to be elected by the direct vote of all voters in a Province he is very likely to be a party-man with strong views of his own, and considering that he will be elected by the whole Province-by the entire adult population of the Province-he will think that he is a far superior man and a far more powerful man than the Chief Minister or Premier of the State who will be returned from one constituency only, but because he happens be the leader of the majority party, he will be nominated Premier by the Governor. There will be two conflicting authorities within the State: One is the Premier and the other is the Governor… Therefore, there will be in the administration of the Province very often points of conflicts of friction between the elected Governor and the elected Chief Minister”\textsuperscript{53}

Shri Alladi Krishnaswami while supporting the amendment of Mr. Brajeshwar Prashad, strongly expressed the views:

“If the Governor is properly functioning as the Constitutional Head, the expenses involved in going through the process of election is out of all proportion to

\textsuperscript{51} C.A.D., Vol. VIII, p. 426.
\textsuperscript{52} Ibid.
\textsuperscript{53} Ibid, Pp. 428-29.
the powers vested in the Governor under the Constitution”.\textsuperscript{54}

He further said that the process of election for the Governor would pose a danger of clash between the Premier and Cabinet responsible to the Legislature and the Governor elected by the people on the basis of Universal suffrage. Citing the example of Canada, he opined:

“If the choice is left for the President and his Cabinet, the President may, in conceivable circumstances, with due regards to the condition of the Province, choose a person of undoubted ability and position in public life who at the same time 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.”\textsuperscript{55}

He further said-

“The central fact to be remembered is that the Governor is to be a Constitutional Head, a sagacious counselor and adviser to the Ministry one who can throw oil over troubled waters”.\textsuperscript{56} In the interest of good working of the Parliamentary form of the Government he suggested to adopt the 'Canadian Model' and have the Governors appointed by the President for the units of the Indian Union.\textsuperscript{57} Dr. P.S. Deshmukh was of the view that when our Constitution was being framed on the pattern of the Act of 1935 having a responsible Government, there was no need of the Governor to be elected by the people because the Governor under the responsible Government was to be a “figurehead and not a person who can interfere with the day to day administration.”\textsuperscript{58} He further argued that in case of an elected Governor, "the relationship between the Provincial Prime Minister and him in all probability would never be cordial" and the circumstances might arise when the elected Governor, by joining the Prime Minister of the Province, might agree "in defying the Centre altogether".\textsuperscript{59} He, therefore, suggested: "the wisest thing for us is to give the power of appointment" of the Governor to the President and “the

\begin{itemize}
\item \textsuperscript{54} Ibid, p. 432.
\item \textsuperscript{55} Ibid.
\item \textsuperscript{56} Ibid, pp. 431-32.
\item \textsuperscript{57} Ibid, p. 433.
\item \textsuperscript{58} Ibid, p. 433.
\end{itemize}
appointment should be made only during the pleasure of the President.”

Dr. P.K. Sen felt that an elected Governor with the backing of the whole provincial population would try to interfere with the responsible Government. Moreover the process of election of the Governor, would impose "tremendous strain" upon each Province.

K.M. Munshi was of the opinion that since the members, of the Constituent Assembly had adopted the "British Model" for India, the election of the Governor by adult franchise in the Provinces remained “an anomaly, a completely out of date and absurd thing.” He further held:

“The expenditure and the energy of a Province under election would have been wasted in putting a second rate man in the party at the head of the Government. That would mean that he will be subsidiary in importance to the Prime Minister as he would be his nominee. If that is going to be the case, there is no reason why the force of a huge election has to undergo.”

Dr. Munshi further pointed out that an elected Governor by adult franchise would try to over-ride the powers of the Prime Minister which would inevitably lead to a conflict. He maintained that an elected Governor would not be able to kept himself detached from party politics as the Governor nominated by the President. When there would be a rivalry for Premiership, the nominated Governor who would be completely detached from party-politics of the Province would be much better than a person who is wedded to the party. In this view:

“It would be much better that this person is nominated and thus cut away from the party political of the Province, so that the competition or the race between the rival groups is conducted in a fair, reasonable and Constitutional manner. All things considered, it would be better to have a Governor nominated by the Centre, who is free from the passions and jealousies of local party politics.”

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60 Ibid, p. 434.
61 Ibid, p. 444.
63 Ibid, p. 452.
64 Ibid, p. 453.
Pt. Nehru, one of the Chief spokesman in framing the Constitution, said:

“Now one of the things that we have been aiming at a great deal has been to avoid any separatist tendencies, the creation of groups etc. I feel that if we have an elected Governor that would to some extent encourage the separatist Provincial tendency more than otherwise. There will be far fewer common links with the Centre...... Apart from the tremendous common links burden of these elections for the Provincial and Central Legislature, to aid another election on this major scale would mean not only spending a tremendous deal of the energy and time of the Nation but also the money of the Nation and divert it from far more worthwhile projects”.

Further he maintained that the election system for the Governor would encourage the "narrow Provincial way of thinking and functioning in each Province" and might produce conflicts in the smooth working of the Provincial Machinery. He observed:

“In providing for a stable democratic machine it is very important for us not to take any step which might tend towards loosening the fabric of India or loosening the Governmental Machinery and thus producing conflicts. We have passed through very grave times and we have survived them with a measure of success. We have still to pass through difficult times and I think we should always view things from this context of preserving the unity, the stability and the security of India and not produce too many factors in our Constitutional Machinery which will tend to disrupt that unity by frequent resources to vast elections which disturb people's minds and at the same time divert a great deal of our resources towards electoral machines rather than towards the reconstruction of the country.”

He further observed: that (election) seemed unnecessary, apart from leading to conflict and waste of energy and money and also leading to a certain disruptive tendency in this big context of an active Governor plus Parliamentary system of democracy.

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65 Ibid, p. 455.
66 Ibid, p. 455-56.
Shri T.T. Krishnamachari explaining the merits of the Presidential and Parliamentary types of the Government in context with the Article 131 of the Draft Constitution observed:

“The elected Governor is not going to be the Champion of liberty of the Province, that he is not going to be the Champion of the minority interest as against an elected Chief Minister. If we decide on an elected Governor we are duplicating the process and provide room for conflict.”

Dr. B.R. Ambedkar clarifying the position stated “the Governor is not to have any kind of functions” and he would be required to follow the advice of his Ministry in all matters, then there was no need to “impose upon the electorate the obligations to enter upon an electoral process which would cost of a lot of time, a lot of trouble and I say a lot of money as well.” Further, nobody would like to contest an electron for the post which was of an ornamental position for its powers.

Thus, the amendment moved by Shri Brajeshwar Prasad for the Article of the Draft Constitution was adopted after a heated discussion by the Constituent Assembly in May, 1949 in the best interest of preserving the unity, stability and tranquility of the country. The tragic events after the partition like the Kashmir war, the influx of Refugees from Pakistan, the separatist tendencies of the former rulers of the native States, the Telengana agitation made the framers persistently to realize that a strong and centralized Government at the top, was inevitable for Preserving the all India unity in the forthcoming period. They, hence, adopted the Canadian method for the appointment of the Governor. Moreover, the framers also wanted to maintain a close link between the Federal Government and the Governments of the units through a nominated Government by the President of India. They, therefore, preferred the Canadian method suitable for the Indian Union rather than other three methods discussed in the Constituent Assembly.

Later, the Article 131 of the Draft Constitution became the Article 155 of the present Constitution which reads as follows;

68 Ibid, p. 463.
70 Shri Krishnaswami Ayyar and Shri Nehru's main emphasis was for maintaining the link between the Union-State relations. Ibid, pp. 432 and 455 respectively.
“The Governor of a State shall be appointed by the President by warrant under his hand and seal”

After rejecting the direct as well as the indirect methods of election, the members of the Constituent Assembly decided that the Governor shall be appointed by the President. There is a Parallel analogy in the Constitution of Canada where the Lieutenant-Governor of each of the Provinces is appointed by the Governor-General on the Advice of the cabinet.

Alladi Krishnaswami Ayyar while supporting this method of the appointment of the Governor said that "in the normal working of the constitution, I have no doubt that the convention will grow up of the Government of India consulting the Provincial cabinet, in the selection of the 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 time 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 be constitutional head... is likely to discharge his functions better than one who is elected on a party ticket by the Province as a whole based upon the universal suffrage or by legislature on some principle of election."71

In Canada and Australia there is a convention that the Governor of a State is appointed on the advice of the Provincial Government.72 Framers of the Constitution hoped that a similar convention will also grow up in the Indian Constitution. Jawahar Lal Nehru as well as Alladi Krishnaswami Ayyar mentioned in the Constituent Assembly that there was likely to be convention that while appointing the Governor, Provincial cabinet would be consulted. Therefore, after considering the various pros and cons of the problem it was decided that the Governor should be appointed by the President.

72 See, Supra, Chaprer-1 of this thesis.
f) How far the system of nomination has fulfilled the hopes of the framers of the Constitution:

Although there is a term of 5 years given to a Governor, he does not have even the protection that a peon enjoys in Government service and is sometimes foot-balled out or about. The humiliating fact is that the Governor has taken it lying down, by and large. Many have been hungry politicians of the Party in Central power holidaying in the Raj Bhavan plotting for an opportunity for re-entry.

The Study Team of the Administrative Reforms Commission, headed by Shri M.C. Setalvad, in its Report submitted in September 1967 likewise observed:

"There have been instances of persons appointed as Governors continuing their connection with active policies, and in some cases returning to active policies after ceasing to be Governors. We have no hesitation in recommending that there should be a firm convention that no person who is appointed Governor should take part in politics after his appointment such."

The Study Team noted the qualities expected of a Governor and remarked that "many of those who have filled posts of Governors during the last 16 years fallen short of this standard. It is our considered view that the real reason for this state of affairs is not the paucity of suitable persons, but the lowly place given to the post of Governor in the minds of those responsible for making the appointments.

g) Dismissal of the Governor

Article 156 stipulates “The Governor shall hold office during the pleasure of the President. Therefore, it is often claimed that the Governor must, as a rule, have a fixed tenure. As Kedia Pandey have observed the constitution has not prescribed the ground for the removal of the Governor. But, surely it is not compatible with a system which claims to be based upon justice and democratic norms. But with the change of the government at the center, they were asked to design and as they paid no heed to it, they have summarily been sacked. It is rightly held that for every functionary either the service period or the retiring age must be mentioned in express terms. And, for his dismissal both the reason and procedure should be clearly fixed
so that he finds, in necessity, ample opportunity of self defense. In short, a person, even of the lowest rank is personally entitled to a fixed tenure of office and there must be some definite rules and procedure for his untimely removal. Otherwise, his independence of mind and sense of security are sure to be badly affected.

Our constitution has followed these principles in the case of almost all important functionaries. For example, our President though normally elected for five years can be earlier impeached for violation of constitution. However, not only the reason of his impeachment but also the procedure of such punitive act has been determined by the constitution. This Article clearly stipulates that no such charge can be preferred against him unless a resolution moved after at least fourteen days’ notice in writing and signed by not less than one-fourth of the total number of members of the Lok Sabha has been given. Such a resolution, then, must be passed by a majority of not less than two-thirds of the total membership of the House. If it is also accepted by the other House by such special majority, the President is removed. In short, both the reason for and procedure of such removal have been clearly determined by the Constitution itself. However, the procedure is so cumbersome that it is very difficult to use it for the removal of an unwanted President.

So, the Article is most likely to remain as a dead-letter for the future.

Similarly, Article 124(4) and 217(1)(B) provide the ground and method for the impeachment of the judges of the Supreme Court and High Courts respectively. On the grounds of proven ‘misbehaviour or incapacity’ such a resolution is moved and if it is passed by the majority of total membership of both the Houses and also by a majority of not less than two-thirds of the members present and voting, the relevant Judge is dismissed. Article 324(5) stipulates that the Chief Election Commissioner can also be removed on the like manner and on the like grounds as the Judge of the Supreme Court. However, it is also a difficult mechanism which is likely to remain practically ineffective. The Speakers of the Lok Sabha and State Assemblies too may be dismissed. But, as Article 94(c) and Article 179(e) indicate, a resolution to that effect must be passed in the Lok Sabha and Assembly respectively. In other words, they hold office so long they can claim the majority of the members

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73 Article 61.
74 Dr. S.C. Das, the constitution of India, p.323.
in the relevant House. So, they too are procedurally irremovable so long they are backed by the majority.

But, in the case of the Governor, the Constitution has expressively vested an unconstitutional and discretionary power to the appointing authority. As Article 156(1) stipulates, ‘The Governor should hold office during the pleasure of the President’. The Governor may, however. Resign his office by writing under his own hand addressed to the President. And, Article 156(3) states:

Subject to the foregoing provisions of this Article, a Governor shall hold office for a term of five years from the date on which he enters his office.

This means that unless he resigns or is dismissed earlier, a Governor may hold office for five years. But, positively re-stated, it suggests that the President can, at any moment, dismiss him at his discretion, because clause (1) of the Article has used the significant term ‘pleasure’ which is a mental phenomenon. In other word, the Governor’s tenure entirely depends upon the subjective satisfaction of the President who can, without having explained the reason or a given charge sheet or show cause notice, withdraw his ‘pleasure’ for removing an unwanted Governor. As Sachdev Gupta\(^75\) writes,

He can be removed by the President at any time who need not assign any reason.

Similarly, Dr. M.M. Singh\(^76\) has observed:

The President may, at any time and on any ground, remove him from his office.

The word ‘pleasure’ is, obviously, very significant, because it is the manifestation of a mental mood which may not have any link with objective factors or proven facts. Thus, neither the matter nor the reason of the removal of the Governor has been determined in the Constitution. He holds office so long the President- rather, the Prime Minister- is satisfied with him. In this way, the issue of

\(^{75}\) Indian Constitution, p.153.  
\(^{76}\) The Constitution of India, p. 770.
gubernatorial dismissal has been kept beyond the judicial ambit. Interestingly, he may also be transferred to another state before or after expiry of normal five year term. But, on the contrary, he may be reappointed in the similar state if the interest of the central ruler demand.

Obviously, such a major was adopted in order to make the Governor a central agent. However, Alladi Krishna Swami Ayer, a member of drafting committee, cogently refuted such allegations in the Constituent Assembly. The Governor is really, in the words of Sardar K.M. Panikar, ‘The watch-dog of the Center’. Thus, though the West Minister model of Britain has been introduced both at the Center and States, there is a significant difference between the two administrative mechanism. The President is liable to impeachment by parliament, but the Governor cannot be removed by the state Legislature even when he earns the wrath of the Minister or the local representatives.

However, at the initial stage some political stalwarts like K.N. Katju, Sarojini Naidu, G.B. Pant, and so on occupied the gubernatorial chair in different states. They had, moreover, close ties with and imposing influence over the Central government which belong to their own party-men. So, during those formative years, this question of dismissal of Governor never arose. But, with the passage of time, everything changed.

Honorable Supreme Court observed in the case of Hargobind v. Raghukul Tilak, “It is impossible to hold that the Governor is under the control of the government of India. His office is not subordinate or subservient to the government of India. He is not amenable to the directions of the government of India nor he is accountable to them for the manner in which he carries out his functions and duties. He is an independent constitutional office which is not subject to the control of the government of India.”

After the election of 1967, some non-congress parties come to power in several states but the Congress retained its authority in Center. Resultantly, the

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77 As Dr. S.C. Kashyap has observed, ‘the pleasure’ of the Governor is not Justiciable. The Governor has no security of service. He may be removed by the President at any time.  
78 Constituent Assembly Debates (CAD), Vol. VIII, p. 4.  
79 AIR 1979, SC p.1109.
Center-State tension dragged the Governors to the Political battle field. In such uneasy situation, some Governors were indecently dismissed as mere political scapegoats. Thus when, after the temporary set back of 1977, Indira Gandhi came back to power in 1980, Raghukul Tilak of Rajasthan, Sadik Ali of Maharashtra and Prabhudas Patwari of Tamil Nadu were asked to resign. Accordingly, Tilak and Ali stepped down but Patwari declined to depart and so, he was promptly axed.\textsuperscript{80}

However, in 1989, a more deplorable misuse of such Central authority was found by which the V.P. Singh government peremptorily dismissed fifteen Governors with a single stroke in order to induct its chosen person in their place. In 1992, M.S. Thomas the Governor of Nagaland, was similarly removed by the Congress government and in 1998 the BJP led the Union Government either transferred or removed the Governor of some states like UP, MP, Gujarat, Mizoram, Bihar etc. Significantly, P.C. Alexander of Maharashtra was granted an extension of service but R.N. Reddy of West Bengal had to depart without any valid reason. Prabhat Kumar, the Governor of Jharkhand was also sacked on grounds of financial charges which we\n never legally examine. Thus, the tenure of the Governor is often linked to Center-State relations. With the gradual erosion of the Congress monolith, different parties have found an opportunity to occupy power in different states and, as such, India Politics has now become a federal panorama. In such a situation, Center-State relationship sometimes becomes tensed and the Governors are often called to pay the price. They are actually in the horns of dilemma—if they defy the stat cabinet, it lambasts them for alleged autocracy, and if they disobey the Central directives, an order of dismissal is sure to follow. So, Dr. V.D. Mahajan\textsuperscript{81} has aptly observed, “he may be sandwiched between party tug-of-war”.

But the occupant of such an exalted office cannot be treated in such an undignified and humiliating manner. In fact, the present method of dismissal of the Governor inconsistent with and derogatory to the high position assigned to him by the constitution. It is a cardinal fact, that the present method of the appointment and dismissal of the Governor is inconsistent with the federal principle. As Soli Sorabji\textsuperscript{82}, the attorney General of India, has observed, such Central authority has seriously impaired the dignity and the integrity of the Governor.

\textsuperscript{80} Dr. A.C. Kapoor, The Indian Political system, p.350.
\textsuperscript{81} The Constitution of India, p. 262.
Circumstances devalued the post, and with that there was a logical fall in the standard of selection for Governors. The post came to be treated as a sinecure for mediocrities or as a consolation prize for what are sometimes referred to as 'burnt out' politicians. Most of the persons selected were old men of the ruling party at the centre. All this should not be construed to mean that no suitable men were appointed but their number was small.


The situation has considerably deteriorated since. At least two members of the ruling party who had to resign from office as Ministers following judicial strictures were subsequently appointed as Governors; to wit, Shri M. Chena Reddy and Shri Ram Lal.

A new danger to democracy when read ominously in the light of frequent use of the Army to suppress civil commotion, is the appointment of vintage military veterans as Governors. What happens if they begin to govern by themselves or if a President were also a military boss?

Even regarding transfers of Governors, the humours, hungers and failures of the party in Central power determined the situation. Dr. Dhawan, in his study "President's Rule in the States" writes:

A Governor should normally be appointed for five years. But this is not always the case. There are various instances where the Centre may have shortened the tenure of a particular Governor for political reasons. Thus, in Punjab in 1966, Governor Ujjal Singh was replaced by Dharma Vira, two days before the latter sent his report recommending the imposition of President's rule in Punjab. Again Governor Dhawan of West Bengal went on 'leave' and later resigned as Governor of West Bengal in 1971 well before his tenure expired. This may have taken place because he invited the Communists to prove that they had a majority in the legislature with a view to forming a Government, because they were the single

largest minority party...

The White Paper prepared by the Karnataka Government quotes Shri H.M. Seervai, which is pertinent to this point.

"The events up to the resignation of Mr Antulay and the subsequent events including, the sanction given by the questions about the position of the Governor, the present position is very unsatisfactory: however, it will be fully discussed in the Chapter on the Union and the State Executive in Vol. II of this book. It is enough to say that the tenure of the Governor's office at the pleasure of the President, which means, in effect, the Union Government, is most unsatisfactory and is liable to grave abuse. The Governor has certain powers under the Constitution. He is not the servant or agent of the President as the Governor's oath of office clearly shows. The exercise of the power to remove or transfer a Governor must cause grave disquiet in the public mind. For example, during the hearing of the petition against Mr Antulay, culminating in the judgment of Mr Justice Lentin, Air Chief Marshal Mehra was the Governor of Maharashtra. Under the Constitution, a report by the Governor on the working of the State Ministry is contemplated under Article 356. Some time after Mr Antulay resigned, Mr Mehra was transferred from the office of Governor of Maharashtra to the office of the Governor of Rajasthan, without any reason being assigned, and he was succeeded by the Air Chief Marshal Latif, who, after the appeal Court judgment, gave sanction to prosecute Mr. Antulay, as stated earlier. Public confidence in the position and authority of the Governor would be gravely impaired by happenings of this kind. It will be suggested in a fault discussion on the Governor's position that his tenure of office must be fixed for a period of 5 years. However, as there is no provision in our Constitution for removing a Governor by a process of impeachment, such as there is for the removal of the President, such a provision should be introduced in the Constitution."

These vices have been most prominent during the Congress (I) regime but have not been absent during the Janata Rule also. Appointment (sometimes disguised as resignation) has reduced the high office to gross ridicule. The current situation is a shameful stultification of the norms expected by the founding fathers and desiderated

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83 N.M. Tripathi Pvt Ltd. 1979, p. 118.
by the dignified, though ornamental, office. When Governors have genuflected, they have been benefited. When they have resisted, they have paid the penalty. Politicisation of the powers of the Governor has imperiled the impartiality of the incumbent. Indeed, the functioning of some Governors like Ram Lal in Andhra Pradesh has been a constitutional shock, but he has and has had close cousins elsewhere.

Having regard to these distortions and remembering the frequency with which the office has been corrupted for dismissing Cabinets and ushering in President's rule, the time has come for the nation to restructure the process of appointment, functioning and termination of Governor's office. Mark you; the functional integrity of the State head is integral to the federal process.

It is interesting to note that the Constitution Review Committee has opined that revival of the old glory and dignity of Governor, it is necessary to change the mode of his appointment. According to the prevailing method, the Governor is appointed by the President and, as such the holder of the office becomes, ultimately, the center’s man. But the aforesaid committee has felt that the Governor should be dignified head of the Province and not a mare central instrument. This is why, it has proposed to form a committee consisting the President, Vice-President, Prime Minister, Chief Minister and such other key persons in order to choose the Governor. It believes that in such case, the Governor would no longer be regarded as a docile instrument at the hands of the center. As Pylee observes, “There is hardly any qualification prescribed for the appointment of the Governor”. So, the center finds the opportunity to send any person as Governor of Province. In fact, they have been chosen from different walks of life-bureaucracy, judiciary, bar, university, army, public life and so on. But one thing is certain- all of them have been actively associated with the ruling party at the center.

However, a convention has meanwhile developed by which an outsider of the Province is chosen as the Governor. The makers thought that a local person might be seriously involved in the State-Politics and it would, thus, tell upon the role he was designed to play. Fortunately, the idea has taken a practical shape through the above

85 An Introduction to the Constitution of India, p. 200.
86 H.H.Das- India Democratic government and politics, p. 200.
said convention.

Sometimes another healthy practice was also followed, but it has not yet crystallized into a convention. On some occasions, however, the Chief Minister of the relevant state was consulted before such an appointment. But, more often than not, prior information about the appointment is not given and even an unfriendly person of the State Government has been imposed upon it as Governor.\textsuperscript{87} There, can be no doubt that this is an important departure from the strict federal principle. In the U.S., the ‘model federation’, Governor’s are elected by the local people and in Canada, the states have a say in the matter of such appointment.\textsuperscript{88}

The constituent assembly after a lengthy and serious debate ultimately preferred to provide for the appointment of the Governor by nomination but not by election and accordingly a provision empowering the President to appoint Governors has been incorporated in the Constitution of India.

B.P. Singhal Versus Union of India & Anr,\textsuperscript{89} Supreme Court held “under Article 156(1), the Governor holds office during the pleasure of the President. Therefore, the President can remove the Governor from office at any time without assigning any reason and without giving any opportunity to show cause. Though no reason need be assigned for discontinuance of the pleasure resulting in removal, the power under Article 156(1) cannot be exercised in an arbitrary, capricious or unreasonable manner. The power will have to be exercised in rare and exceptional circumstances for valid and compelling reasons. The compelling reasons are not restricted to those enumerated by the petitioner (that is physical/mental disability, corruption and behaviour unbecoming of a Governor) but are of a wider amplitude. What would be compelling reasons would depend upon the facts and circumstances of each case.”

h) Suggestions:

But inspite of the advantages above mentioned there is a feeling that this method of appointment needs a change and time and again this demand had

\textsuperscript{87} S.L.Sikri- Indian govt. and politics, p.223.
\textsuperscript{88} G.S.Pandey- Constitutional law of India, p. 227.
\textsuperscript{89} Decided by Hon’ble Supreme Court on May 7, 2010
been made both inside and outside parliament and the following suggestions have been made in this connection:

1. The Governor should be appointed only with the concurrence of the State Government.

2. The Governor should be appointed by the President from a panel of names approved by the Government of that State.

3. He should be appointed by the President out of panel of names prepared by the Central Government in consultation with the opposition at the Centre.  

4. The appointment of the Governors should be got approved from Parliament.

5. The Governor of the State should be elected by the Legislatures of the State.

6. The Governors should be appointed by the President not in consultation with Ministers but on the advice of a high powered body.

7. The President should exercise his discretion in the appointment of Governors and he should not act on the advice of the Council of Ministers in this respect.

8. He should be elected by an electoral college consisting of the members of the State legislative Assembly, legislative council, whenever it exists and the members of all the autonomous local bodies of the State.

9. The Governor should he appointed by the President out of panel of names recommended by the President's council consisting of ex-judge of the Supreme Court.

10. The appointment of Governor by the President (which in turn rests on the advice of the council of Ministers), must have the approval of atleast two-third members of Lok Sabha (House of the people) or one-half of the members of both houses of Parliament.

From the point of view the Rajamannar appointed by the Tamil Nadu government in

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1968 opined that before appointing the Governor, the central government should talk with the Minister of the Province. The administrative reforms committee also expressed the same view. Article 156(1) should be amended in order to change the method of gubernatorial dismissal. The Governor should be allowed to function for the full term and that if his ouster is warranted by valid reasons, he must be given sufficient opportunity to argue his case.

i) **Comments of Sarkaria Commission on Appointment/Removal of Governor:**

The Sarkaria Commission in its report has come out with some very useful observations and suggestions on the issue of appointment and removal of Governor. It is of the view that much of the criticism against the Governors could have been avoided if only their selection had been made on correct principles to ensure appointment of right type of persons as Governors. The replies to the questionnaire of the Commission on the point reveal some very unhealthy trends/practices in the appointment of Governors. There have been instances of discarded and disgruntled politicians from the party in power at the Centre being appointed as Governors when they cannot be accommodated elsewhere. Such persons naturally tend to function as agents of Union government rather than as impartial constitutional functionaries. Examples of Ministers being appointed Governors after being removed from office on account of adverse judicial comments have also been cited. The Commission is of the view that;

1) A person to be appointed as a Governor should satisfy the following criteria:

   i) He should be eminent in some walk of the life.

   ii) He should be a person from outside the State.

   iii) He should be a detached figure and not too intimately connected with the local politics of the State.

   iv) He should be a person who has not taken too great a part in politics generally, and particularly in the recent past. Agreeing to the views expressed by Pt. Nehru in the Constitutional Assembly, the Commission further says that in selecting a Governor in accordance with the above criteria, persons belonging to the minority
groups should continue to be given a chance as hitherto.

2) It is desirable that a politician from the ruling party at the Union is not appointed as Governor of a State which is being run by some other party or a combination of other parties.

3) The Vice-President of India and the Speaker of Lok Sabha may be consulted by the Prime Minister in the selection of Governor. The consultation should be confidential and informal and should not be matter of constitutional obligation.

4) The Governor’s tenure of office of 5 years in a State should not be disturbed except very rarely and that too, for some extremely compelling reasons.

5) Save where the President is satisfied that in the interest of the security of the State, it is not expedient to do so, the Governor whose tenure is proposed to be terminated before the expiry of the normal term of five years, should be informally apprised of the grounds of the proposed action and afforded a reasonable opportunity for showing cause against it. It is desirable that the President (in effect, the Union Council of Ministers) should get the explanation, if any, submitted by the Governor against his proposed removal from office, examined by an Advisory Group consisting of the Vice-President of India and the Speaker of the Lok Sabha or a retired Chief Justice of India. After receiving the recommendation of this group, the President may pass such orders in the case as he may deem fit.

6) When before expiry of the normal term of five years, a Governor resigns or is appointed Governor in another State, or has his tenure terminated, the Union Government may lay a statement before both Houses of Parliament explaining the circumstances leading to the ending of the tenure. Where a Governor has been given an opportunity to show cause against the premature termination of his tenure, the statement may also include the explanation given by him, in reply.

7) As a matter of convention, the Governor should not, on demitting his office, be eligible for any other appointment or office of profit under the Union or a State Government except for a second term as Governor or election as Vice-
President or President of India. Such a convention should also require that, after quitting or laying down his office, the Governor shall not return to active partisan politics.

8) A Governor should, at the end of his tenure, irrespective of its duration, be provided reasonable post-retirement benefits for his surviving spouse.

Consent of the Chief Minister:

For proper working of the parliamentary system, discussed the Sarkaria Commission, there has to be a personal rapport between the Governor and the Chief Minister. Only then the Governor as the constitutional head will be able to act us ‘friend, philosopher and guide’ of his Council of Minister. It is of the view that in order to ensure effective consultation with the State Chief Minister in the selection of a person to be appointed as Governor, the procedure of consultation should be prescribed in the Constitution itself by suitably amending Article 155. Where-two or more states are to have a common Governor, the Chief Minister of each of them may be consulted. The main purpose of consulting the Chief Minister according to the Commission, is to ascertain his objections, if any, to the proposed appointment. If the Union Government considers that the objections of the Chief Minister are not groundless, it may suggest an alternative name. However, if it finds that the objections are frivolous or manifestly untenable, it may inform the Chief Minister accordingly and proceed to make the appointment.

ii) Recommendations of National Commission to review the working of Constitution on appointment/removal of Governor:

The Commission, in the light of experience gained over the years since the Sarkaria Commission Report, made some more useful suggestions on the subject. It agreed with most of the recommendations of Sarkaria Commission subject to certain conditions. The recommendations of the Commission are as below:

The Commission agreed that Article 155 of the Constitution requires to be amended. While agreeing to the idea of consultation with the Chief Minister of
the state, Sarkaria Commission had suggested consultation with the Vice President and the Speaker of Lok Sabha. It was, however, of the view that such consultation should be confidential and informal and should not be a matter of constitutional obligation. The National Commission for the Review of Constitution, on the other hand, favours a more transparent procedure. It also suggests the constitution of a committee comprising the Prime Minister of India, the Home Minister of India, the Speaker of Lok Sabha and the Chief Minister of the state concerned to select the Governor. The Committee may also include the Vice President of India. The Commission recommends that article 155 and 156 of the Constitution be amended to provide for the following:

1) The appointment of Governor should be entrusted to a committee comprising the Prime Minister of India, Union Minister of home affairs, the speaker of Lok Sabha and the Chief Minister of the concerned state;

2) The term of office viz. five years should be made a fixed tenure;

3. The provision that the Governor holds office during the pleasure of the President be deleted;

4) Provision be made -for the impeachment of the Governor by the state legislature on the same lines us the impeachment of President by the Parliament. Of course where there is no upper house of State legislature, appropriate changes may be made in the procedure to make up for such non-existence.

5) In the matter of selection of Governor, it recommends the acceptance of the guidelines mentioned in para 4.6.01 and 4.6.02 of Sarkaria Commission Report.

According to the Commission, with the above changes, not only the oath taken by the Governor would not remain a mere formality but his office would be invested with requisite dignity and integrity.