

• must be citizen of India.

Debate in Constituent Assembly

• Since Parliamentary system was adopted at the Centre it had to be adopted at state level also.

• Parliamentary form of govt. requires 2 heads : Real & Nominal.

Constituent Assembly discussed 3 options.

1. Elected Governor

Option could not be accepted because it will result into 2 centres of power.

2. Since it is a constitutional or nominal position, it would have been unwise to go for election.

3. Governor to be elected by Legislative Assembly of the state, the system which was adopted w.r.t. State of Kashmir initially. In such situation Governor will be controlled by the largest party & his impartiality ^{have} ~~can~~ be under question.

3. Governor appointed by Union Govt.

Above option appeared most reasonable.

Criticism:

• Indian democracy is known as ideocracy. Constitutional provisions will work well if situations remain ideal. However,

it will create problems in real situations.

Nehru's proposal: If healthy conventions are followed, the system of appointment by Union Govt. will not threaten Constitutionalism & Federalism. He proposed following

- > Persons of eminence & not having active political background in recent past to be selected.
- > Selected person not to be from same state
- > The CM of the concerned state to be consulted. In case CM is not comfortable, that person shall not be imposed.

However in practice Nehruvian suggestions were not followed.

Observation of 1st ARC

- Instead of persons of eminence, active politicians & bureaucrats have been inducted.
 - The position became as a prize for the defeated politicians.
- Impact: It has undermined Parliamentary democracy at the level of the state.

Suggestion: Bishwanath Das, the member of Constituent Assembly warned Nehru that we are not imagining a situation when different parties will be ruling at Centre & state. If persons like Nehru & Patel will be there in future also, problem shall not arise. But there is no such guarantee.

Hence it is suggested that system of appointment should be amended & Nehruvian conventions should be made the provisions in the Constitution.

It is also suggested that instead of Union selecting the Governor, inter-state Council can select panel of persons & Governor to be selected from the panel.

View of Punchhi Commission

- It also suggests to lay down the qualifications mentioned by Nehru explicitly in the Constitution itself.

2. System of Removal

Governor holds office during the pleasure of President. Pleasure of President in effect means pleasure of Union Govt. In the past there have been numerous cases where Governors have been removed for political reasons. In 1977 when Janata Party came to power, it removed Governors of 9 states at 1 go. appointed by previous Congress Govt. Again in 1980 when Congress came back to power, it also removed 9 Governors. at 1 go. It has become common to change the Governors with change of govt. at Union.

View of SC

- B.P. Singhal vs Union of India case

- President & in effect Union govt has power to remove Governor at any time without giving him reason or granting him opportunity to be heard.

Removal
can be
done
subject
to SR

- However power cannot be exercised in arbitrary & capricious manner. Power to be exercised in rare & exceptional circumstances for valid & compelling reasons.
- Mere reason that Governor is at variance with Central govt is not sufficient to remove

discretion to use discretion.

- Change of govt. cannot be a ground for removal of a person & appointment of favourites.

View of Punchhi Commission

- Pleasure Doctrine without appropriate conduct is against Constitutional governance. P
- Governor should be given right to defend his position.

3. Discretionary powers of Governor.

Art. 163 mentions that there shall be a COM. with the CM as the head to aid and advice the Governor in exercise of his functions except in those situations under the Constitution which require Governor to exercise his discretion.

It further says that if any matter falls under his discretion or not is also Governor's discretion & it shall not be challenged in the court of law.
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President does not have discretionary powers except in case of hung Parliament but Governors have discretionary power under the Constitution in following situation:

1. Giving assent to bill or withholding the assent
2. In case Governor reserves bill for President's reconsideration
3. Recommend the imposition of Art. 356.

Analysis of

- Above powers of Governor are modelled on Govt. of India Act 1935.

The purpose of retaining such discretionary powers was the situation prevailing at the time of independence. In a country with rule of law discretionary powers to be used with caution & in the right spirit. They are to be used in the interest of nation & not in the interest of party ruling at Centre. Discretionary powers of Governor have been misused in a big way. Governors have exercised discretionary powers in a very arbitrary manner. Same Governor has used his discretionary power in similar situation differently.

e.g., In 1952, Governor of Madras did not invite T. Prakasam of United Front with 166 seats rather invited C. Rajgopalachari of Congress to form the govt. At that time C. Rajgopalachari was not an elected member also & Congress had 152 seats.

- > Governor Romesh Bhandari of U.P. dismissed Kalyan Singh govt without giving him opportunity to prove his majority & immediately instituted Jagdambika Pal as CM of U.P.. Ultimately Judiciary had to intervene & for the 1st time Composite floor testing took place
- > Governor Biju Singh of Bihar recommended the dissolution of Assembly even before exploring the possibility of formation of govt. on the suspicion of large scale horse trading. Union govt. was also in haste, Govt got president's approval. President was on foreign visit.

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Observation of SC Judiciary on position of Governor

- Observation of Calcutta HC 1969

• The discretion of Governor is Governor's discretion.

➤ • Hargovind Pant vs Raghukul Tilak 1979 :

It was given by 5 judges bench.

> Every person appointed by President is not necessarily an employee of Union Govt.

> Even when Governor holds office during the pleasure of President, it doesn't make him an employee.

> He is not subordinate to Govt. of India.

> He is head of the state holding high constitutional office.

> His is an independent Constitutional office.

> He is not amenable to directions of Union govt.

> He is not accountable to Union govt. for the manner in which he carries his functions.

View of H.M. Sreedhar Sreenivas

• HMS mentions in his book "Constitutional Law of India" that governor acting on directions of Central govt. is against the basic structure of the Constitution.

Sarkaria Commission

• Governor is a linchpin of federation.

Views of Soli Sorabjee

• Governor can do great deal of good if he is a good Governor. He can do great harm if he acts otherwise.

Significance of Governor today

Governor's position has become more important in the context of

Punchhi

- Increasing threats to internal security situations.
- For safeguarding rights of SCs & STs.
- Maintaining communal harmony.

However Punchhi commission also mentions that Governor has to construct discretionary powers narrowly. There are no blanket discretionary powers. His actions should not appear fanciful or arbitrary. Action should be dictated by reason, activated in good faith & tempered with caution.

Views of former PM Manmohan Singh.

He has given 4 mantras to be observed by Governor.

1. You are the sole judge of what is right & what is wrong.
2. It is your judgement to understand the mandate of the Constitution.
3. You have to judge what is in the best interest of the country.
4. You have to see what people expect from you.