

A PAPER ON GOVERNOR'S POWER TO SUMMON THE PARLIAMENT

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INTRODUCTION

The Governor is the constitutional and executive head of state. The Governor's powers as the state's head are similar to those of the President, with the exception that the Governor has no emergency, diplomatic, or military powers.¹ The powers and duties of the Governor are well discussed in various commission reports like the Punchi Commission Report, 2007, Sarkaria Commission Report, 1988, etc. In this paper, we will analyze the ambit of the Governor's power to summon and prorogue the session of the assembly and the level of influence of the council of ministers on the use of such powers. There are some instances where the Governor can act without the aid and advice of Council Ministers, these are called discretionary powers² and are limited in nature. The summoning of the assembly follows a well-established protocol. The assembly is called to order by the cabinet or the chief minister on a particular date. The process is generally initiated by the cabinet or the Chief Minister and the Speaker is intimidated. On the speaker agrees to the defined date, the request is forwarded to the Governor. The cabinet decides on the date. If the government decides to prepone or postpone the hearing after the president has signed the summons order, the updated data is sent to the president, who signs it according to the government's decision. This is standard procedure in parliament and all legislatures. It is not necessary for the cabinet to inform the governor of the agenda. The important thing to remember is that the proposed session's date and agenda are determined solely by the government. Even if the governor offers a different date, the Governor must sign the summons order if the administration sets its own. In the instance which was observed in the State of Rajasthan where the Chief Minister, Mr. Ashok Gehlot repeatedly requested the Governor, Mr. Kalraj Mishra to call upon a session of the State Legislature to deliberate upon the political stability and the handling of coronavirus induced pandemic. The Governor in this case didn't concede to the request of the Chief Minister and kept the proposal pending by sending back a list of questions. Mr. Mishra insisted that a certain period of 21 days is required for calling out a session. The Governor's move has raised the question of whether he has the

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¹ 1 (Basu, 1988, p. 233).

² Joy V, "The Use and Abuse of Discretionary Powers of Governor in Formation of Ministry in a State in India" (2018) 64 Indian Journal of Public Administration 228.

authority to reject the Council of Ministers' recommendations.³ In another instance which was recorded in Kerala in late 2020, where the governor Mr. Arif Muhammad Khan refused to grant permission to summon the Kerala Assembly for passing a strict unanimous decision against the Centre's farm laws. The governor was not convinced of the urgency of the situation and found no reasonable grounds to accept the request. This created yet another tussle between the chief minister and governor. Mr. Vijayan, Kerala's chief minister, contended that the governor had no authority to deny the request for calling the assembly such a session.⁴

CONSTITUTIONAL PROVISIONS

In the constitution, there has been deliberation on two provisions about the governor's authority to summon and prorogue the sessions of the assembly. Article 174 states that "The Governor shall from time to time summon the House or each House of the Legislature of the State to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session."⁵ Article 163 states that "There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion."⁶ Article 163 acted as an umbrella in totality to the functions of the governor, it clearly states that the governor has to function according to the advice of the council of ministers. The governor Mr. Kalpraj Mishra directly defied the provisions of this article by rejecting the request of the council of ministers thrice. Article 174 left some room for ambiguity as to what is the definition of "as he thinks fit". This issue was greatly debated and criticized.⁷ A similar incident was recorded in Arunachal Pradesh in 2016 where the speaker of the constituent assembly, Nabam Rebia⁸ filed a case against the State government when an assembly session was preponed as requested by a group of members of the Legislative Assembly. The reason for preponing the

³ Vishwanath A, "Explained: When Can a Governor Use His Discretion, How Has Supreme Court Ruled?" (*The Indian Express* July 29, 2020) <<https://indianexpress.com/article/explained/rajasthan-govt-crisis-explainedwhen-can-governor-use-discretion-how-sc-ruled-6525917/>> accessed February 26, 2022.

⁴ Correspondent S, "Kerala Governor Denies Assent to Convene Assembly" (*Return to frontpage* December 22, 2020) <<https://www.thehindu.com/news/national/kerala/governor-denies-assent-to-convene-assembly/article33396277.ece>> accessed June 15, 2022

⁵ Constitution of India art. 174.

⁶ Constitution of India art 163.

⁷ The Week. 2022. *Rajasthan power tussle puts Article 174 in the spotlight*. [online] Available at: <<https://www.theweek.in/news/india/2020/07/25/rajasthan-power-tussle-puts-article-174-in-the-spotlight.html>> [Accessed 25 February 2022].

⁸ *Nabam Rebia and Bamang Felix v Deputy Speaker, Arunachal Pradesh Legislative Assembly and Ors.* (2016) 8 SCC 1 [179].

session was the political instability and loss of confidence in the government. The Supreme Court clearly concluded that the “governor can summon, prorogue and dissolve the House, only on the aid and advice of the council of ministers” but with an exception where the governor can act independently if he/she has reasons to believe that the chief minister and cabinet has lost the pleasure and confidence of the House. The judgment clearly established that the governor has no discretionary powers in respect of calling/dissolving a session except under a special circumstance of the falling of the government.

It can be said that state governments headed by the Chief Minister and the Council of Ministers are not mere political appendages, they are constitutional functionaries in their own rights. So any amount of action by the government which in common parlance is understood as the representative of the central government which amounts to diminishing the offices of the rightfully elected state government is unconstitutional. Therefore governments of the day should foremost consider the recommendation of the Sarkaria Commission⁹. In a vast country like India federalism is the lynchpin which sustains any sort of fissiparous tendencies which can emerge, hence all actions which strengthen the federalism nature of the country should be encouraged and nurtured.

⁹ Sarkaria Commission Report on Role of the Governor (1988).