Chapter-3
THE GOVERNOR AND THE LEGISLATURE

The State Governor is an integral part of the Legislature in the Indian States under the Article 168 of the Constitution, which consists of the Governor, the Assembly and the Legislative Council if it is a bicameral Legislature. The king in England also becomes an integral part of the Parliament of that country which consists of House of Lords and the House of Commons. The Indian Constitution closely based on British Parliamentary democracy, the Constituent Assembly has conveniently adopted the same system for the Union government too, where the President of India becomes the integral part of the Indian Parliament. The Constitution of India thus makes the executive authority of the State coextensive with the legislative authority of the State. As an integral part of the State Legislature the Governor of a State enjoys extensive legislative powers.

Nomination to Council:

According to the Constitution of India, the Governor of State is to nominate one sixth of the members of Legislative Council and the members so nominated shall consist of personality of proven talents having special knowledge in respect of such matters as art, literature science, cooperative movement and social service. This power of nomination to the Upper House was intended to give representation to unrepresented elite class whose unequivocal service can be use to the government and its functions. The categories mentioned in Article 171 (5) are not exhaustive. Each of the subjects is not required to be
represented in every case. Even the practical experience in the spheres enumerated in the clause makes a person eligible for nomination to the Council even though he has no special knowledge in them. A person who has taken active part in politics and the governance of the State for several years is presumed to have practical experience in matters of social service and therefore, qualified to be nominated as a member of the Council. The nomination of members of the Legislative Council of the State made by the Governor under Article 171 (3) (e) read with Article 171 (5) is an act done by him in his official capacity. The Governor not being answerable to the Court by reason of Article 361, no legal proceeding will lie in a court of law challenging the nomination of the members on the ground that the persons nominated are not duly qualified. Whether the members nominated to the State Legislative Council under Article 171 (3) possess the required qualifications is a question of fact and the High Court cannot decide it under Article 226. When it is not shown that a person nominated to the Legislative Council was disqualified or that the Governor had no power to nominate him, the mere showing that the nomination was made for political reasons will not be sufficient to issue a writ of quarewarranto.

Where selection of person for nomination to the Legislative Council was made by the Chief Minister with the approval of the Council of Ministers and a subsequent publication of a notification of names was made stating that the Governor had nominated those members, the nomination will be deemed to
have been made by the Governor and the Court cannot enquire into the advice, if any, given by the Council of Ministers to the Governor.

Article 171, clause (3) (e) and (5) makes an inroad into the principle of election which is the foundation of the system of Parliamentary government established by the Constitution. Clause (5) was not intended to make membership available in the public interest to persons having special knowledge or practical experience in the sphere mentioned so that they may not contest election.

The nomination under Clause 171 (3) (e) is made by the Governor on the advice of the Council of Ministers. In Uttar Pradesh (U.P.) a piquant situation arose. After the Assembly elections in 1993 no political party has acquired adequate membership to claim majority in the House. The first government under Mulayam Singh Yadav was formed in coalition with Bahujan Samaj Party (BSP) with outside support of other political parties and independent members except the Bhartiya Janata Party (BJP). There was split in June 1995 between Samajwadi Party led by the Mulayam Singh Yadav and BSP. As a result BSP members of the House elected Ms Mayawati as their leader and laid claim to form the government with assured support of BJP in the House. Mulayam Singh Yadav despite having lost majority support in the House persisted to continue. The Governor Moti Lal Vora, therefore, dismissed the Council of Ministers headed by Mulayam Singh Yadav and appointed Ms Mayawati, leader of BSP as Chief Minister and directed to prove
majority on the floor of the House within specified period. Ms Mayawati succeeded in showing massive support in the House with the aid of BJP and also of others. After 4 months there was apparent split between BSP and BJP and each leveled incriminating charges against the other. There was a threat of withdrawal of support of BJP or BSP refusing support of BJP in running the government. The likely prospects were that the Chief Minister may advise the Governor to dissolve the House and tender her resignation. Mayawati was not a member of the Legislature of the State and therefore she was to cease to be Chief Minister after the expiry of six months from June 3, 1995 under Article 164 (4) of the Constitution. In this background Ms Mayawati, Chief Minister of U.P., sent to the Governor the nomination of nine persons to the Legislative Council including herself under Article 171 (3) of the Constitution. While the matter was pending before the Governor she resigned on October 17, 1995 and President's rule was imposed in the State. The following questions were raised:

(a) Whether it would be correct in law or in propriety to make nomination in Legislative Council on the advice of the Chief Minister or Council of Ministers, which has lost confidence of the Legislative Assembly?

(b) Whether it would be correct in law or in propriety to allow the Chief Minister to seek her own nomination when this power of nomination is to be exercised by the Governor on proposal of Chief Minister herself under item 15 of Second Schedule of Rules of Business 1975.
S.S. Bhatnagar, then Advocate-General of U.P. held the view that the Governor is not bound by the advice of the Council of Ministers in the above particular circumstances. A paramount requirement laid under Article 164 is that a Chief Minister or Council of Ministers is responsible to the Legislative Council. It is this democratic trust by elected representatives of the people of the State which gives authority to the Chief Minister to advise the Governor in discharge of executive power vested in the latter under Article 154 of the Constitution. The executive power is in fact exercised by the Council of Ministers under Article 163 though it expressed to be taken in the name of Governor under Article 166 of the Constitution.

The function to nominate a member to the Legislative Council under Article 171 (3) (e) of the Constitution is preserved to the Governor with the aid of Chief Minister alone. (See item 15 of Second Schedule under Rule 8 of U.P. Rules of Business, 1975, framed under Article 166 (2) and 3 of Constitution). The said rule shows that the nomination to the Legislative Council is not matter which goes to Council of Ministers under Rules (7) of Rules of Business, 1975. On reading the provisions of Article 154, Article 162 and Article 166 of the Constitution it is clear that the power to nominate to the Legislative Council under Article 171 (3) (e) of the Constitution is a constitutional power of the Governor as it does not fall in the definition and extent of executive power provided in Article 162 of the Constitution. In the Rules Business, this power to nominate to Legislative Council is preserved by the Governor in the Second Schedule.
Item 15 under Rule 8 is to be exercised by him with the aid of Chief Minister alone. It is not a matter, which can go to Council of Ministers under Rule 7 enumerated in First Schedule to Rules of Business. Thus this being the power of Governor to nominate to the Legislative Council under Rules of Business, 1975, shared with the Chief Minister, it cannot be read as a power of the Chief Minister to nominate herself. A division bench of Allahabad High Court has taken the view that the ‘power to nominate’ means a power to nominate some other person and not to nominate on self. This view of the High Court was accepted by the State Legislature when it amended the University Act to empower the Chief Justice to nominate himself or other judge. Thus the power to nominate to the Legislative Council under Article 173 (3) (e) of the Constitution is a constitutional power of the Governor and is distinct from executive power of the State which vests in the Governor under Article 154 to be exercised through officer subordinate. The power to nominate to the Legislative Council of the Governor being distinct from the executive power of the State. It falls outside Article 166 (1) also. Thus, conclusion is that Governors power to nominate a person to Legislative Council is a constitutional power, who is himself a part of the Legislature. Therefore, this power is to be exercised in his own discretion.

In January 1996 a writ petition was filed in the Allahabad High Court (Lucknow Bench) for directing the Governor to accept the advice of the Council of Ministers for nominating the
members to the U.P Legislative Council on the ground inter alia as follows:

- Under Article 163 of Constitution, the Governor is bound by the advice of ministers tendered by the Council under Article 171 of the Constitution.

- Except the discretionary powers of the Governor which are constitutionally recognised there is no other power which is exercisable in his discretion. Therefore the power under 171 (3) (e) has to exercised by the Governor on the advice of the Council of Ministers.

The nomination of a member by the Governor under sub-clause (5) does not infringe the personal right of any elected members of Legislative Assembly even in an indirect manner so as to entitle him to sustain an application for the issue of writ of certiorari to quash the nomination made by the Governor.

**Summoning of House:**

The Constitution of India Article 174(1) enables the Governor to summon the 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 the last sitting in one session and the date appointed for its first sitting in the next session and Article 174(2), the Governor from time to time –

a- Prorogue the House or either House.

b- Dissolve the Legislative Assembly.

According to established Parliamentary convention, the Governor should act on the advice of the Chief Minister of the
State, as is the British practice. In Britain, the sovereign always exercises his/her prerogatives of summoning the Parliament on the advice of Prime Minister being in line with well-formed conventions. The Governor usually exercises this power on the advice of the Council of Ministers. But in situation of defection or one of the support withdrawals by any coalition segment may make the task of the Governor difficult. His act of summoning or non-summoning the Assembly may prove decisive, because he can extend critical support to one party or the other and hence there is differential of opinions regarding the exercise of this power. The Governors have used different standards in various States in summon of the Legislative Assembly. As Bihar was gripped by a political crisis in 1967. B.P Mandal group of Legislators withdrew their support from M.P Sinha ministry and formed a new political party called Soshit Dal. B.P. Mandal urged the Governor to convene an early emergency session of the Legislative Assembly to assess the strength of the government. Chief Minister M.P. Sinha insisted that he alone was to decide when to summon the Assembly. He also said that the smooth passage of the Appropriation of Bill indicated that he enjoyed majority support in the House. The State Governor concurred with the assessment of the Chief Minister and did not call an earlier session of the Assembly and convened it to meet on the day suggested by the Chief Minster. M.A. Ayyangar did the same in 1970, when Ramanand Tewari, the leader of Bihar Praja Socialist Party, informed the Governor that with the withdrawal of the support by the Communist Party of India and a section of
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the Praja Socialist Party, the Bhola Paswan Sashtri government was reduced to minority. The Governor refused to oblige him and maintained that, "while the majority of the ruling coalition headed by Bhola Paswan Shastri could be tested only in the Assembly it had not shown signs of political instability following the withdrawal of support by the Communist Party of India". The State of West Bengal was plunged into a serious crisis as a result of the defection of P.C. Ghose, the then Food Minister of the State, who along with 16 members withdrew his support to the United Front government headed by Ajay Mukherjee of Bangla Congress in 1967. It reduced the government to a minority and the Governor asked the Chief Minister to convene an early session of the Assembly. He wrote, "in view of the fact that 17 supporters of United Front government have withdrawn their support and 16 of them and the leader of Congress Legislature Party have signified their willingness to support an alternative government a reasonable doubt has arisen in the West Bengal Assembly". The Chief Minister, Ajay Mukherjee demurred at this suggestion and advised him to convene the Assembly on December, 18, and 1967. The Governor dismissed the United Front government and invited P.C. Ghosh to form an alternative government which the latter promptly did.

The one of the significant example in the Karnataka Devraj Urs, government was, dismissed in 1977 on the mere suspicious, entertained by the Governor, that he had ceased to command a majority supports as a result of defections inspite of the fact that the Assembly was under summons and was going to meet
within three days, was it not the duty of Governor to put his doubt to test in the appropriate forum? Was it competent on the part of the Governor, acting from the position of a constitutional head, to take such a drastic action as dismissal without an adverse verdict given by the Assembly? If the Governor's conduct in the whole exercise is examined from the norms of Parliamentary system it is not difficult to appreciate the fact that throughout he had been playing politics and in the process the Constitution was violated in most blatant manner.

In the analogous circumstance in the same State in 1989 the Janata Dal government headed by S.R. Bommai was sacked. The fact at the case are that K.P. Mulakery, a Janata Dal member had defected from the party and wrote to the Governor that he had withdrawn support from the government, the next day he presented to the Governor 19 letters, alleged to have been signed by them, signifying their withdrawal of support from the government. Mr. Verkatsubahiah sent those letters to the Secretary of the Legislature for verification of signatures and after the authenticity of them was established, he reported to the President, that in view of the letters indicating the withdrawal of support, Bommai had lost his majority support and therefore constitutionally the government could not continue any further. He also informed the President that no other party was in a position to form an alternative government. It is also reported that 7 out of 19 who had defected earlier had returned to Janata Dal the very next day and had informed the Governor that their signatures were obtained fraudulently on misrepresentation of
facts and they fully supported the government. The State cabinet met the same day, and with a view to dispel the clouds of suspicion which had gathered, because of the politics of defection, decided to convene the Assembly session within a week and the Governor was advised accordingly. The Chief Minister informed the Governor that he was prepared to face the Assembly, any time he chooses to summon, to prove his majority. The Governor instead of summoning the Assembly as advised by the Chief Minister, which was the only appropriate constitutional forum to take a decision on the issue which had cropped up, added taint to the facts that 7 members who had returned back to Janata Dal had done it under pressure and the whole atmosphere had become vitiated by defection and the Bommai government which had lost the majority support, should be dismissed. The President however accepted the recommendation make by the Governor and imposition of the President's rule in the State.

**Prorogation of the Assembly:**

Under Article 174 (2) (a) the power to prorogue the Assembly of the State is vested in the Governor. There is a little difference between the terms adjournment, prorogation and dissolution of the Assembly. As the prorogation terminates the session of the Assembly and it operates until a fixed date, and the adjournment does not terminate the session but it is an interruption in the course of one and the same session. It postpones the further business for specific time, i.e. hours, days
or weeks. Dissolution means the end of the life of the Legislative Assembly and calls for a fresh election. According to Parliamentary practice, the Governor exercises the power of prorogation on the advice of the Council of Ministers, and it has become a well-established convention that the Governor prorogues the State Assembly on the advice of the Council of Ministers. The Punjab Governor D.C Pavete, prorogue the Legislative Assembly on April 10, 1970 while the resolution of removal of speaker was already there. On the other hand the Governor of Tamil Nadu K.K. Shah prorogued the Assembly on November 1972 in exercise of the power conferred upon him by Article 174 (2) (a) in order to resummon the session on 5th December 1972, when the speaker of the Assembly adjourned the sitting of the Assembly to 5th December 1972. The Governor exercised this power similarly when 35 out of 62 Members of Legislative Assemblies (MLAs) of Congress Party withdrew support from C.M.Sidique in favour of M.R. Kasim in Jammu and Kashmir. Siddique get the House prorogued on March 3, 1970 during the budget session. The Governor cannot exercise the function of proroguing the Assembly in his discretion. He is bound by the advice of the Council of Minister. However, the Governor is always not bound to act according to the advice of the Council of Ministers, particularly when the prorogation is sought at the time when either his Chief Minister and his Council of Ministers has been threatened or reduced to minority or a vote of no-confidence motion is under consideration or the resolution for the removal of the speaker is pending. Through the
Parliamentary practices say that the Governor should act according to the advice of the Council of Ministers, it is he in fact who takes an oath to protect and defend the Constitution and therefore he must ensure that the Assembly should get its fair chance to measure its strength.\(^3\)

The Governor's Committee (1971) is of the view that the Governor should normally act on the advice of the Council of Ministers. But if a Chief Minister advises the prorogation of the Legislative Assembly when a notice of a no confidence motion is pending the Governor should not prorogue the House. Sarkaria Commission report also holds the same views. Article 174 (2) which enables the Governor to prorogue the Legislature does not indicate any restriction on the power. When the Governor exercises the power while the Legislature is in sessions and in the midst of Legislative work the motive of the Governor may conceivably be questioned on the ground of an alleged want of good faith and about of constitutional power. But when an Emergency arises, it exercise is perfectly understandable and it is not an abuse of power. On the speaker adjourning the Legislature of two months beyond March 31 making it impossible for the Finance Bill being passed before March 31, the Governor can prorogue the Legislative Assembly and get rid of the adjournment. Article 174 (2) does not put any restriction on the Governor's power and his action cannot be questioned as malafide when the Legislature is not in session. Courts are bound to take judicial notice of prorogation and presume the regularity of these actions which must be interpreted as far as
possible so that the thing alone may valid rather than invalid. Thus, the right to prorogue the House should be with the Governor but it does not mean that he will use it as an instrument to interfere in the normal working of the State Legislature.

**Dissolution of the Assembly:**

The Article 174 (2) (b) of the Constitution reveals that the power of dissolution of the Legislative Assembly is the discretionary powers of the Governor. There in no explicit provision in the Constitution which regulates this power of Governor nor has any convention developed in this regard. Thus the power to dissolve the Assembly by the Governor has been a subject of great controversy. In normal circumstances the Governor is bound to dissolve the Assembly if such on advice is tendered to him by a Chief Minister having a majority support. For instance, in many States the Chief Ministers got the Assembly dissolved, on the ground that he or she wanted that the Assembly and Parliamentary elections to take place simultaneously i.e. in Andhra Pradesh and Karnataka, the Chief Minister of respective States N.T.Rama Rao and Ram Krishna Hedge got the Assembly dissolved as they wanted that the Assembly election be held simultaneously with the Parliamentary elections in January 1984. In Kashmir in 1984, 12 members of the Assembly defeated from National Conference in the leadership of G,M.Shah and withdraw their support from the government headed by Dr. Farooq Abdullah. Dr Abdullah
advised the Governor to dissolve the Assembly but the Governor did not accept the advice because having lost support of the majority members. Dr Abdullah Ministry had no constitutional right to recommend the dissolution of the House. Thus, the Constitution of India contains no specific provision defining under which circumstances the Governor can grant or refuse dissolution or any constitutional provisions requiring him to act always in conformity with ministerial advice on every matter. It is open to the Governor to refuse dissolution when asked for by a defeated party leader in case the Governor can form an alternative Council of Ministers to run a State administration. If the Chief Minister enjoys the majority support then the advice of the dissolution should be accepted. The power of dissolution is most valuable and most powerful instrument, which ought to be used in extreme cases. The Governor should take the steps very cautiously and judiciously before allowing a Assembly to be dissolved and going frequently for mid-term election, which will incur an additional burden to the national exchequer. The Article 174 (2) (b) expressly vests the Governor the power to dissolve the Legislative Assembly over if it is to be on the advice of the Council of Ministers. The power to given such an advice is automatically taken over by the Union government for the purpose of dissolution on the President assuming governmental powers by a proclamation under Article 356 (1). A dissolution by the President after the proclamation would be as good as a dissolution by the Governor.
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Right to Address the Legislature:

According to Constitution, the Governor may address the Legislative Assembly or in the case of a State having a Legislative Council, either House of the Legislature of State or both Houses assembled together and may for that purpose require the attendance of members. The Governor may also send messages to the House or Houses of the Legislature of the State, whether with respect to a Bill then pending in Legislature or otherwise, and a House to which any message is so sent shall with all convenient dispatch consider any matter required by the message to be taken into consideration. The address of the Governor under Article 175 to Legislative Assembly or to both Houses of Legislature is not obligatory and it is within his discretion. The power of the Governor under this Article will not be exercised on the advice of the Council of Ministers. The very fact that a Governor can send messages with respect to a Bill shows that it is a power given to him to influence the deliberations of the Assembly on some occasions at least. When a party in power has majority in the Lower House but not in the Upper House, they may persuade the President to send message to the Upper House to persuade the opposition to agree to a particular legislation. The power of sending messages may sometimes also be used for influencing the House when no political party has a clear cut majority in the House.

According to Article 176(1) makes it obligatory on the part of the Governor to address the Legislative Assembly or in the
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case of a State having Legislative Council assembled together at the commencement of the first session after each general election to the Legislative Assembly and commencement of the first session of each year and inform the Legislature of the causes of its summons. The Syed Abdul Mansur Habibullah Vs the Speaker of West Bengal Legislative Assembly, the Calcutta High Court held that Article 176 should not be interpreted as merely a directory. In Saradhhakar Vs Speaker, Orissa Legislative Assembly it was laid down that the Legislature in India cannot ordinarily be said to have met until the mandatory preliminaries under Article 176 have been gone through. It clearly means that the Governor is bound to address under Article 176. The addresses of the Governor are prepared by their respective governments. This raises some pertinent questions which are:

- Should a Governor read the address in person?
- Will the address be taken as read if the Governor utters just a word from it?
- Can the Governor refuse to read some part of the address if, according to him, it is self-condemnatory and impinges upon the dignity of his person and office both?

The first question is, whether it is necessary for the Governor to be present in person to read the address or can someone deputise for him. Unlike the Centre where the Vice-President deputises for the President in the letter's absence, in the State there is no post analogous to that of the Vice President. Here, the Governor addresses the members in person. Even in a
State of physical indisposition he will have to address in person unless he proceeds on leave and somebody officiates or takes charge of the Governor. In such a contingency such a Governor will address the Legislature in person. The only concession that can be made in the case of an ailing Governor not proceeding on leave is to permit him to address the Legislature outside the precincts of the Legislature. Such a situation cropped up in the State of Rajasthan. On February 22, 1961 the Governor Gurumukh Nihal Singh of Rajasthan addressed the members of the Legislative Assembly in the Raj Bhawan on account of illness.

The second issue is, will the address be taken as read if the Governor reads only a part of it and not the whole of it? Such a situation may arise if some members create disturbances at the time of the address and do not allow the Governor to proceed with it. Instances are on record when several Governors were compelled to leave the Houses without reading the complete address. In West Bengal in 1965 Padmaja Naidu, the Governor of West Bengal, left the Assembly without completing her address because of the frequent noisy interruptions made by the Opposition. She laid her address on the table of the House and declared that it be taken as read. Commenting upon the incident, the Calcutta High Court opined. "When the Governor makes due attempt to perform the duty under Article 176, but fails and walks out of the House and make up the failure by publication of the address to the members of the Legislature by a well known method, namely, by laying the address on the table
of the House, the duty is merely irregularly performed and such an irregularity cannot be called in question under Article 212 (1). Unless there grows a constitutional convention that the Governor's addresses shall be heard with attention, respect and ceremony due to the constitutional head of the State, there may be occasions when members of the Legislature may indulge in loud shouting and unruly behaviour when the Governor comes to address. To hold that a Legislature must not be deemed to have met when a Governor is unable to begin or to finish the address under Article 176 and is compelled otherwise to publish the address is to put a value on such disturbances when they do not deserve. "The Governor's reading of portion of his speech from beginning and a portion from the concluding part followed by the House adopting a resolution taking the Governor's speech as read could be taken as the speech having been delivered.

The third issue centres round the power of the Governor to skip over such portion from his address prepared by his Council of Ministers, which he considers derogatory to the dignity or his exalted office. This happened in West Bengal in 1969. Dharma Vira, was the Governor of West Bengal when the United Front government headed by the Chief Minister Ajay Mukherjee assumed office in 1967. Subsequently the then Food Minister, P.C. Ghose along with 16 others, from the United Front, reduced the government to a minority. The Governor asked the Chief Minister to demonstrate his majority on the floor of the House but he was unwilling to face the Assembly on the date suggested by the Governor. Hence the Governor dismissed the State.
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ministry and installed P.C. Ghose in office as the Chief Minister. When the Assembly met, the speaker Bijoy Banarjee refused to recognize the new government and created a constitutional deadlock. To overcome it the Governor was untimely compelled to dissolve the State Legislature and order a fresh poll. In the mid-term election in 1969, the erstwhile United Front emerged victorious with added majority and the opposition was badly routed. The new United Front ministry headed by Ajay Mukherjee, again decided to settle its score with Governor Dharma Vira whom it blamed for its earlier ouster. Hence in the address of the Governor, which it prepared, it inserted two paragraphs, which the Governor refused to read. The Governor Dharma Vira argued that the paragraphs were self-condemnatory for him. According to him "Parliamentary government, with all its practices and conventions, has been in existence for centuries. But never in its history has any head of the government been faced with the problem of having to read self-condemnatory material neither according to the Constitution nor according to Parliamentary practices. The Governor of Punjab D.C. Pavate underwent a similar experience in 1969. His address too contained an objectionable paragraph concerning the toppling of the previous government of Gurnam Singh in Punjab in 1968. D.C. Pavate requested the Chief Minister Gurnam Singh to drop that reference and the latter readily agreed to drop it and the matter ended there and then. Had Gurunam Singh insisted on the Governor reading that paragraph, it would have created a piquant situation. D.C. Pavate
observers, "speech is, according to democratic tradition, ordinarily prepared by the Chief Minister and my duty is simply to read it as approval by the government". The question is if the address is an expression of the views of the government and not the Governor, the former should not transgress its authority and condemn the Governor and Central government. Thus, the Governor address under Article 175 as different from his address under Article 176 in a number of respects:

- The address under Article 175 is entirely at the option of the Governor; that under Article 176 it is mandatory.
- Under Article 175 in the case of a bicameral Legislature, the Governor may address the Houses in a joint session or separately; under Article 176, he has to address the House jointly only.
- The subject-matter of the Governor's address is not specified under Article 175 whereas under Article 176 he has to inform the Legislature of the causes of its summon.
- Article 175 does not provide for the allotment of time for the discussion of the matter adverted to in the Governor's address. Under Article 176 (2) provision shall be made by the rules regulating the procedure of the House or either House for the allotment of time for discussion of the matter referred to in the address.
It may be pointed that the procedure prescribed in the rules made under Article 176 is directory. Their non-observance would not vitiate the Assembly proceedings.

**Disqualifications of Members:**

According to the Constitution, under Article 192(1) if any question arises as to whether a member of a House of Legislature of a State has become subject to any of the disqualifications mentioned in clause(1) of Article 191, the question shall be referred for the decision of the Governor and his decision shall be final. Before giving any decision on such question, the Governor shall obtain the opinion of the Election Commission and shall act according to such opinion under Article 192(2).

The conditions for the application of this clause are:

- That a question as to disqualification has arisen. The clause, however, does not lay down where, by whom and in what manner the question should arise. It is not necessary that it should arise in the Legislature itself.

- That question must be referred for the decision of the Governor. It does not however, say that some other authority must receive the compliant, hold an inquiry and then refer it for the decision of the Governor. If any such question arises in any manner it has to be decided by the Governor alone and the courts shall have no jurisdiction to determine it.

Article 191 of the Constitution enumerates certain disqualifications for being chosen as a member of the Legislature of State. The words “has become” indicate that disqualification
which can be referred to the Governor, under this Article is a disqualification arising subsequent to the election and not existing at the time of election. The words “shall be final” indicate that the Governor’s decision cannot be questioned in any court as to its propriety or correctness. There is authority of the Supreme Court to the effect that an appropriate writ may lie to set aside the order if it is established that the order was passed,

- on collateral consideration or
- in contravention of the rules of natural justice or
- on no evidence or
- on the advice of the executive or other authority who was not entitled to advise the Governor in the matter of exercise of such quasi-judicial function.

Full bench of the Madras High Court held that a writ petition under Article 226 against a decision under Article 192 (1) is maintainable. The Andhra Pradesh High Court held that no writ petition under Article 226 to adjudiciable the question of disqualification of a member of Legislature is competent, the jurisdiction vests in the Governor under Article 192 (1). The decision or the question raised under Article 192 (1) has to be pronounced by the Governor, but that must be in accordance with the opinion of the Election Commission. When the Governor receives the complaint and he forwards the same to the Election Commission, it can assume that the Election Commission should proceed to try the complaint before giving
its opinion. It would not, therefore, be correct to say that it is
the Governor who should hold the enquiry and then forward to
the Election Commission all the material collected in such an
enquiry to enable it to form its opinion and communicate the
same to the Governor. The Election Commission receiving
complaint and order of reference by Governor acts within the
jurisdiction in sending notice to the other party. A sitting
member gets the opportunity to put forward his objection to an
allegation to an alleged disqualification at an enquiry which is
to be held by the Election Commission before the latter
forwards its opinion under Article 192 (1) to the Governor.

The question is whether the Governor is bound by the
opinion of the Election Commission rendered about
disqualification of a member of State Legislature. Can the
Election Commission take decision if one of its members is
disqualified from participating in the decision making? Answers
to these vital issues have been given by the Supreme Court while
disposing of an appeal of the Election Commission against a
judgment of the Madras High Court which had allowed the plea
of Tamil Nadu Chief Minister Ms Jayalalitha alleging bias against
the Chief Election Commissioner, T.N. Seshan.

A three judge bench comprising the Chief Justice, Justice
A.M. Ahmadi, Justice N.P. Singh and Justice B.N. Kirpal citing
earlier judgment of the Supreme Court on this issue held that
the President or the Governor, as the case may be, was bound by
the opinion of the Election Commission on the question of
disqualification of a member and in such case the decision of the
President or the Governor must depend on the opinion of the Election Commission and none else, not even the Council of Ministers. Referring the Article 192 (2) of the Constitution, the judges say it is clear from the use of the words “shall obtain the opinion of the Election Commission”, that it is obligatory to obtain the opinion of the Election Commission and the further stipulation that the Governor “shall act” according to such opinion on leaves no room for doubt that the Governor is bound to act according to that opinion. The next question raised before the Court was: can the Election Commission take a decision if one of its members is disqualified from participating in the decision making. It may be referred to Jayalalitha’s alleged bias against the Chief Election Commissioner T.N. Seshan. The Court held that under the provisions of the Constitution and relevant law it was not imperative for the Chief Election Commissioner to participate in each and every decision that the Election Commission was required to make under the Constitution.

**Assent and Reservation of Bills:**

The Governor is a component of the State Legislature under Article 168; every Bill passed by the State Legislature has to be reserved for the Governor’s assent under, Article 200 before it becomes an Act. The Article prescribes the procedure to be followed when a Bill has been passed by Legislative Assembly or Legislative Council of a State. It is by its very term inapplicable when there is no House of Legislature. According to this Article a Bill passed by the State Legislature are presented to the
Governor for his assent. He may take one of the following measures as under:

- Assent a Bill which would become effective after his assent or
- Withhold his assent to a Bill.
- Return a Bill (except the Money Bill) to the Legislature for reconsideration.
- Reserve a Bill for the consideration of the President.

So far as assenting to a Bill is concerned the Governor may declare his assent to the Bill and thereby completes the legislative process. The Bill then becomes a law (Act) and is put on the statute book. As regards to withholding the assent to the Bill, the pertinent question here is how far a Governor is logically competent to withhold an assent to a Bill presented to him. The Governors of different States acted different in giving their assent to the Bills approved by the States Assemblies respectively. The Governor of Madhya Pradesh H.V. Pataskar withheld his assent to “Land Revenue Rationalisation Bill” on the ground that it was likely to cause harm to the smooth working of the administration. In Kerala, the Governor B. Rama Krishna Rao withheld his assent to the Kerala Education Bill passed on September 2, 1957 by the State Assembly. He reserved the Bill for consideration of the President on the ground that some of the provisions of the Bill were contrary to the principles of the Indian Constitution. The Governor, therefore, being head of the State and as the Centre’s agent to the State is competent to withhold
his assent there from on the ground that the Bill would soon after becoming a law affect the fundamental interests of the people. But by following this course he has to show the reason for withholding his assent there from to the Bill and convene the ministry about the rationality of withholding his assent.

The Governor of the Uttar Pradesh (U.P) Romesh Bhandari and Suraj Bhan withheld their assent to the U.P State University (Amendment) Bill 1998 on the ground that it hampers the autonomy of the State Universities. Contrary to this, the Governor of Assam Vishnu Sahai did not act, when the Bill for the Assamese official language approved by the State Assembly was present for the assent of the Governor in 1960. The Governor being aware of the implications and likely consequences and the Bengalis and tribal minority's opposing to the particular Bill, had assented it and consequently this controversy led to serious language riots in the State.

Another question which is relevant related to withholding of assent thereupon is whether the Governor has a right to without a Bill indefinitely, and thus by implications veto it because the Constitution does not provide any time limit for the Governor to take any course for a Bill pending for his assent. The Constitution does not impose any time limit within which the Governor should make any of these declarations if he simply keeps a Bill pending before him indefinitely. According to Parliamentary convention the head of a State acts on the advice of the Council of Ministers. In this respect, the Governor has no right to veto a Bill passed by the Legislature. Legislature is sole
law making body pertaining to the subjects specified within its parameters of the State. The Bill undergoes all the Legislative processes and the business before being finally presented to the Governor for his assent. The Governor, therefore, under no circumstances, can veto a Bill independently. He can, of course, exercise his veto at the pleasure of the ministry. But no ministry can be that acquiescent to advice a Governor to veto a Bill after it has faced all the hurdles for the passing of a Bill in the Legislative Assembly.

It is provided in this Article that the Governor may return a Bill (except Money Bills) for the consideration to the House or Houses as the case may be with a message that the Bill be considered or modified in the light of his suggestion. The proviso further adds that when a Bill is returned “the House shall reconsider the Bill accordingly”. The use of words “shall and accordingly” means that it shall be the duty of the Legislature to reconsider the Bill in the light of suggestions or amendments proposed by the Governor of the State. But the Legislature is not bound to accept these suggestions. They may or may not accept such proposal, and when passed again and submitted to him, the Governor shall not withhold his assent therefrom. Thus, it becomes obligatory on the part of the Governor to affix his signature to the Bill. However, it will not be obligatory on the part of the Governor to affix his signature on the Bill in which Legislative Assembly of the State, in addition to his amendment incorporated new changes, and in that case he can treat it as a new Bill and as such the Governor may exercise his options in
giving assent to the Bill. Now the question is whether the Governor while returning the Bill for consideration will do it in his discretion or on the advice of the ministry.

The Governor has no discretion expressly stated in the Constitution in this regard, it seems quite, in keeping with the traditions with the Parliamentary government that when he can ask for reconsideration of any matter of the ministry, he can also ask for reconsideration of the Bill by the Legislature. As far as the time limit is concerned in which a Governor should take time in either giving his assent or withholding or returning a Bill for reconsideration the Constitution provides that he would take steps as soon as possible and therefore it does not prescribe any time limit. It may be further asked whether the Governor is entitled to send a Bill back for its reconsideration to the successor House. The dissolution of the Legislative Assembly does not prevent the exercise of the powers of the Governor under Articles 200 and 201 with respect to a Bill, which has been presented for his assent prior to the dissolution. Thus there is nothing in the Constitution to direct that the assent of the Governor or the President must be given during the life time of the Assembly which passed the Bill.

The Governor may reserve a Bill for reconsideration of the President. It is in the Governor’s discretion as to what Bill he will reserve for the President’s consideration. Now the pertinent question is what are the norms and criteria that a Governor should follow in reserving the Bill for consideration of the President. If a Governor started reserving for Presidential
consideration every Bill that he thought was unconstitutional there would be serious difficulty in conducting legislative process in the State. Besides the question whether the Bill is constitutional or otherwise is for the courts to determine, and issues of constitutionality of statutes are not as easy as they appear at the first blush, and it is the sobering experience of many constitutional lawyers that the statutes which appeared to be unconstitutional for more than one reason have been upheld by the Supreme Court after full discussion and argument. The last proviso of the Articles 200 provides that the Governor “shall” not assent to, but shall reserve for the consideration of the President any Bill which in the opinion of the Governor would, if it become law, so derogate from the powers of the High Court as to endanger the position which that court is by this Constitution designed to fill. The words ‘in the opinion of the Governor’ indicate that ‘the Governor may use his right to reserve a Bill for the consideration of ‘the President’. The Governor by exercising his power to reserve a Bill for the President’s pleasure may act in his discretion to preserve the independence, dignity and status of the State judiciary.

The words, ‘derogate from the powers of the High’ Court are qualified by the words ‘which endangers the position of that court which by the Constitution, it is designed to fill’. Hence if a Bill merely seeks to affect the rights of the parties in a case pending before the High Court without endangering the constitutional position of the High Court, it need not to be reserved under this proviso.¹⁵ The Constitution lists certain
special circumstances under which a State Bill should receive
the assent of the President in order to become a law, which
makes mandatory of the Governor to reserve a bill for the
consideration of the President. These cases are:

- Under Article 31 (a) certain types of legislation providing
  for acquisition of property have to obtain the assent of
  the President to become a law.

- Under Article 254 a State law in respect of a matter in
  the concurrent list which is repugnant to an existing
  Central law on the same matter is validated by the
  assent of the President.

- Under clause (2) of the Article 288, the laws made by the
  State government relating to the taxation in respect of
  water and electricity shall be reserved by the Governor
  for President’s sanction.

- The Governor will also reserve all the Bills for the
  President’s assent including the Money Bills to which
  the provisions of the Article 207 will apply in case these
  Bills affect the operation of Article 360 of the
  Constitution. It is also to be noted that the President
  also gives discretion to the State Governors to reserve all
  the financial Bills for his consideration.

- Article 304 (b), the Governor may reserve such Bills
  passed by the State Legislature without the previous
  sanction of the President, in which the State government
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has imposed some reasonable restrictions on the freedom of trade and commerce with or within the State.

It is only a Bill by the Legislature of a State whether is single or bicameral, which can be reserved for the consideration of the President and for assent of the President. There is no provision in either of the Articles 200 and 201 or any Article of the Constitution which permits the Governor of a State to assent to a Bill passed by the Legislature of a State and thereafter reserves it for the consideration of the President to obtain a further assent.\textsuperscript{16}

Where the Governor reserves a Bill for consideration of the President under this Article and the President gives the assent, the Act is valid and cannot be challenged on the ground that it did not receive the assent of the Governor. Reservation is a function to be exercised by the Governor in his discretion and neither the propriety of the Governor's reservation in a particular case nor that of the assent by the President is justifiable\textsuperscript{17}. A Bill assented to by the President would not be rendered ineffective as an Act on the ground that there was no compelling necessity for the Governor to reserve it for the President's assent\textsuperscript{18}. There is no constitutional requirement that if principal Act has once received the President's assent every amending Bill thereafter should be reserved for the President's consideration and assent\textsuperscript{19}. When the President assents to an amending Act, he may be deemed to have assented the parent Act while assenting to the amending Act.\textsuperscript{20} When an Act is published in the official Gazette showing that the assent of the head of State was given
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on a particular date, the factum of assent cannot be challenged in any court\textsuperscript{21}. The mere fact that the head of State was not present in the capital on a particular date is not enough to prove that his assent could not be given on that date, as there are other methods of obtaining his assent e.g. by telegram, telephone or the like.\textsuperscript{22} The High Court has no jurisdiction to declare a Bill which has not received the Governor's assents as \textit{ultra vires}.

When the Bill has been reserved by the Governor for consideration of the President, the President may take one of the three courses.

1. He may assent to the Bill
2. He may withhold assent,
3. He may, where the Bill is not a Money Bill, direct the Governor to return the Bill to the House or Houses of the State Legislature, for reconsideration.\textsuperscript{23} When a Bill is so returned, the House must then consider the Bill within a period of six months from the date of receipt. If it is again passed by the Houses with or without amendment, it shall be presented again to the President for his re-consideration. And when a Bill is presented for the second time, after reconsideration the President may assent to the Bill or reject it.

The Bombay Tenancy and Agricultural Lands Act cannot be impugned on the ground of violation of Article 201 of the Constitution. Under Article 201, the High Court is concerned with the question whether in fact assent has been given by the President and, if assent has been given, it is not for the High
Court to consider whether recommendation to amend the Bill were made by the government of India and those recommendations were ignored by the government of Bombay. The alleged failure of the government of the Bombay to submit the Bill for considering the recommendation made by the Government of India does not affect the validity of the Bill, which by the assent of the President became an Act of the Bombay Legislature\(^2^4\). The Karnataka Land Reform Act 1974, assented to by the President, is not invalid on the ground of the President having earlier withheld his assent, when the material before the court was not sufficient to prove the ground.\(^2^5\)

**Ordinance Making Power of Governor:**

According to Constitution of India under Article the Governor has to perform another important legislative function also, when the State Legislature is not in session the Governor can promulgate Ordinance. If he feels that conditions are abnormal in his States. Such Ordinance will have the same force as an act of the State Legislature, and it will be valid up to the six weeks from the reassembly of the State Legislature unless disapproved by it earlier. The Governor is also empowered to withdraw such ordinance at anytime he deems proper.

Under Article 213 of the Indian Constitution, the Governor of a State can issue Ordinances under the following conditions:

- The Governor can issue Ordinances only when the Legislative Assembly of a State is not in session or where there are two Houses, both Houses are not in session.
• The Governor must be satisfied that circumstance exists which render it necessary for him to take immediate action. In other words, the Governor of a State has a power to promulgate an Ordinance when there are some extraordinary circumstances which have existed in the State at a time when none of the Houses is in session and there is an urgent need to meet the situation.

• The Governor cannot issue Ordinance on the proposal on which he fails to obtain the previous sanction from the President.

• The Ordinances must be laid down before the both Houses of the State Legislature when they assemble and the validity of such Ordinances shall cease to operate at the expiration of six weeks from the reassembly of the Legislature, unless it is approved earlier by the Legislature.

• The Governor may withdraw the Ordinances at any time.

• The Ordinance-making power of the Governor is coextensive with the legislative power of the State Legislature, i.e., he can only issue Ordinance on the subjects on which the State Legislature is empowered to make laws.

• The Governor cannot issue an Ordinance without the instruction of the President in the following cases:
Bill containing the same provision would have required the previous sanction of the President for its introduction in the Legislature.

He would have deemed it necessary to reserve a Bill for the consideration of the President.

An Act of the Legislature of the State containing the same provisions would have been invalid unless having been reserved for the consideration of the President and had received the assent of President.

As required, the Governor can promulgate Ordinances only during the recess of the Legislature. It is an absolute condition for the exercise of the power that the Legislature or either House thereof must not be in session at that time. When the State Legislature consists of one House, viz., the Assembly no Ordinance can be promulgated at a time when the Assembly is in session. But where there are two Houses the Governor may promulgate an Ordinance if either of two Houses, has been prorogued. In an Allahabad case validity of an Ordinance was upheld even though the Assembly was in session and the Council has been prorogued, just a few days before promulgation of the Ordinance. The Governor may prorogue the Legislature of either House thereof for the purpose of making an Ordinance. If, however, the Ordinance is promulgated before the order of promulgation is notified, the Ordinance would be invalid. A House is said to be in session from the date of its first meeting till its prorogation or dissolution. Promulgation of Ordinance is
not a discretionary power of the Governor but must be exercised with the aid and advice of the ministers.\textsuperscript{30} The Article lays down that the Governor will promulgate an Ordinance only when he is satisfied. It does not however mean the personal satisfaction of the Governor but that of his Council of Ministers on whose advice he is to act as a constitutional head.\textsuperscript{31} The satisfaction of the Governor is subjective satisfaction and the court is therefore not entitled to inquire into the reasons for that satisfaction or into the sufficiency of those reasons. The Ordinance need not in terms recite that the Governor was satisfied about the circumstances necessary for his taking an immediate action. The statement in an Ordinance 'whereas the Governor is satisfied that circumstances exist' is presumptive proof of the factum of satisfaction. Though the court may inquire into the fact of the Governor's satisfaction, it cannot inquire into the reasons for that satisfaction or into the sufficiency of those reasons. In some cases\textsuperscript{32} the Supreme Court held that the Governor's satisfaction under Article 213(1) cannot be challenged in a court of law on the ground that it was prompted by the malice but the observations made by the majority of the constitutional bench in the judgment in A.K. Roy Vs Union of India\textsuperscript{33} have not been wiped off by two 1985 decisions\textsuperscript{34} which lay down that the validity of an Ordinance can be challenged on the ground of \textit{malafides}. However the Supreme Court has held\textsuperscript{35} that since Ordinance making is a Legislative and not an executive act, an Ordinance cannot be invalidated on the ground
of (a) no application of mind or (b) ulterior motive or ulterior purpose.

A question arises, can successive Ordinance be issued?

The Supreme Court in Wadhwa Vs State of Bihar\textsuperscript{36} has settled this issue by holding that the promulgation of Ordinances without placing them before the Legislature as required by Article 213 (2) (a), in a routine manner, would be fraud on the Constitution and as such repromulgated Ordinance would be struck down. Of course, a repromulgation may be justified in extreme cases when owing to the pressure of the Legislative business; the Legislature may be unable to enact a statute in place of the Ordinance. But to resort to it as a matter of usual practice would constitute usurpation by the executive of the law making function of the Legislature.

The proviso to Article 213 (1) mentions the cases when the President’s instructions are necessary for the promulgation of an Ordinance by the Governor. Article 213 (1) provides that the Governor shall not promulgate an Ordinance without the President’s instruction if

- It contained some provision requiring the President’s previous sanction.
- He deemed it necessary that some of the provisions needed reservations for the President’s consent, and
- Where it is an Act of the State Legislature containing some provisions which would have rendered it invalid unless it had been reserved for and received the President’s assent.
Where a case is within the proviso, the promulgation of an Ordinance by the Governor without President's prior sanction will be void. If a State Legislature required the President's previous consent, no Ordinance on the same subject can be issued without the President's previous assent. The power of legislation by Ordinance is as wide as power of the Legislature of the State. Whatever could be achieved through regulation by the Legislature could be achieved by an Ordinance. Subject to the limitation as to the duration of the Ordinances as laid down in clause 2(a) there is no other limitation upon the Ordinance-making power of the Governor save those that are imposed upon the State Legislature under the Constitution. Hence an Ordinance may amend or repeal not only another Ordinance but also any law passed by the Legislature itself, subject to the limitation as to its own duration. Similarly where a law passed by the Legislature could be retrospective in operation, there is nothing to bar an Ordinance on the same subject from being retrospective. Though the duration of the Ordinance itself is limited to the period laid down in clause 2(a) there is nothing to prevent an Ordinance from prescribing a sentence or from making other provision such as the creation of an office which will endure even after the expiry of the Ordinance. On the other hand, an Ordinance would be invalid for contravention of the constitutional limitation to which the State Legislature is subject, i.e. Articles 14 and 254. In short, when the competence of the Governor is questioned, what the court has to determine is whether the State Legislature was competent to make the
impugned law and whether the conditions of Article 213 have been fulfilled. The important question in this regard is whether the Governor can enact the Appropriation Bill by means of an Ordinance after proroguing the House, when it has been rendered impossible owing to the speaker's ruling. The answer is that there is nothing in the Constitution which debars the Governor from issuing the Ordinance. 41

As far the duration and approval of the Ordinance is concerned, it has to be placed before the Houses of the Legislature, within six weeks of its reassembly. When there are two Houses of the Legislature and the Houses are summoned to reassemble on different dates the period of six weeks shall be reckoned from the latter of those dates. The requirement of placing the Ordinance before the Legislature is directory. The only consequence of non-compliance with this requirement is that the Ordinance will cease to operate at the expiration of six weeks from the re-assembly of the Legislature. It does not affect the initial validity of the Ordinance. 42 When the Ordinance lapses under Article 213(2) either because it is disapproved by the Legislature or because the Governor does not lay it before the Legislature or because it is not replaced by an Act of the Legislature, the Ordinance does not become void ab initio. Transactions which are already closed and completed in pursuance of such Ordinance or right created by it shall nevertheless remain valid, until the Legislatures make an Act operating retrospectively nullifying all acts done under the Ordinance. 43
References:

1- Kashinath Mishra Vs University of Allahabad and others, AIR 1971 Allahabad.

2- Daujee Gupta Vs State of Uttar Pradesh, AIR 1996.


4- Constitution of India, Article 175(1).

5- Ibid., 175(2).

6- AIR 1966 Calcutta 365.

7- AIR 1952 Orissa 234.

8- Syed Abdul is West Bengal Legislative Assembly, AIR 1966 Calcutta 365.

9- Election Commission Vs Sakavenkata, AIR 1953 SCR1144 (1158), AIR 1965 SC 1892.

10- Joyoti Prakesh Vs Union of India, AIR 1971 SC1093, Rajasthan Vs Union of India, AIR 1977 SC 1361.

11- Hoechst Vs State of Bihar, AIR 1983 1019.

12- Purshotam Vs State of Kerala, AIR 1962 SC1019.

13- Ibid.

14- Thirumalpad Vs State of Kerala, AIR 1961 Kerala 324.


16- Kameshwar Vs State of Bihar, AIR 1952 SC 252.

17- Hoechst Vs State of Bihar, AIR 1983 SC 1019.
18- Ibid.
21- Bharat Sevasram Vs State of Gujarat, AIR 1987 SC 494 (paras. 6-7).
22- Ibid.
23- Constitution of India, Article 201.
24- AIR 1957 Bombay 252.
25- AIR 1975 Karnataka 53.
26- Bidya Vs Province of Bihar, AIR 1950 Patna 19.
29- Bidya Vs Province of Bihar, AIR 1950 Patna 19.
30- Cooper Vs Union of India, AIR 1970 SC 564.
31- Samsher Singh Vs State of Punjab, AIR 1975 SC 2192.
33- AIR 1962 22 SC 710.
34- Venkata Vs State of Uttar Pradesh, AIR 1985 3 SCC 198.
35- Nagraj Vs State of Andhra Pradesh, AIR 1985 ISCC 523.
36- AIR 1987 SC 579.
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37- Utkal Contractor Vs State of Orissa, AIR 1987 SC 2310.
38- United Province Vs Atiqua, 1942 FCR 10.
39- Jogendra Vs Superintendent, AIR 1933 Calcutta 280.
40- Haren Vs State of West Bengal, AIR 1952 Calcutta 907.
41- Satpal Vs Lt. Governor, AIR 1979 SC 1550.
43- Ibid., (paras. 19-20).