

Role of governor in summoning an assembly

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In news

The role of governor in summoning an assembly comes to light as the Kerala Governor has turned down a request to summon a special sitting of the Assembly by the Chief Minister

Governor's role in summoning an assembly

Article 174 of the constitution says “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”.

What does article 163 say about the Governor?

Although it is the Governor's prerogative to summon the House, **according to Article 163, the Governor is required to act on the “aid and advice” of the Cabinet.** So when the Governor summons the House under Article 174, this is not of his or her own will but on the aid and advice of the Cabinet.

Applicability of discretionary power of Governor in summoning the assembly

- There are a few instances where the Governor can summon the House despite the refusal of the Chief Minister who heads the Cabinet.
- **When the Chief Minister appears to have lost the majority and the legislative members of the House propose a no-confidence motion against the Chief Minister, then the Governor can decide on his or her own on summoning the House.**

- But the actions of the Governor, when using his discretionary powers can be challenged in court.

Supreme court decision on Governor's discretionary power

- A number of rulings by the Supreme Court has settled the position that the Governor cannot refuse the request of a Cabinet that enjoys majority in the House unless it is patently unconstitutional
- The five-judge Constitution Bench judgment of the Supreme Court **in Nabam Rebia versus Deputy Speaker on July 13, 2016** held that a Governor cannot employ his 'discretion', and should strictly abide by the "aid and advice" of the Cabinet to summon the House.
- The then Chief Justice J.S. Khehar held that "the Governor can summon, prorogue and dissolve the House only on the aid and advice of the Council of Ministers with the Chief Minister as the head. And not at his own"
- The Supreme Court highlighted how Article 163 of the Constitution does not give the Governor a "general discretionary power to act against or without the advice of his Council of Ministers".

In another case (Arunachal Pradesh constitutional crisis) the court had held that "in ordinary circumstances **during the period when the Chief Minister and his council of ministers enjoy the confidence of the majority of the House, the power vested with the Governor under Article 174 to summon, prorogue and dissolve the house(s) must be exercised in consonance with the aid and advice of the chief minister** and his council of ministers. In the above situation, he is precluded [from taking] an individual call on the issue at his own will, or in his own discretion,"

Governor's discretionary apply in limited areas: SC

- The court said the Governor's discretionary powers are limited to specified areas like giving assent or

withholding/referring a Bill to the President or appointment of a Chief Minister or dismissal of a government which has lost confidence but refuses to quit, etc.

- “The area for the exercise of his discretion is limited. Even in this limited area, his [Governor’s] choice of action should not be arbitrary or fanciful. It must be a choice dictated by reason, actuated by good faith and tempered by caution,” the court said.

Sarkaria Commission on Governor

Even the Sarkaria Commission of 1983, which reviewed the arrangements between the Centre and the states, had said that “so long as the Council of Ministers enjoys the confidence of the Assembly, its advice in these matters, unless patently unconstitutional must be deemed as binding on the Governor. It is only where such advice, if acted upon, would lead to an infringement of a constitutional provision, or where the Council of Ministers has ceased to enjoy the confidence of the Assembly, that the question arises whether the Governor may act in the exercise of his discretion”.