

Governor's Discretion vs Democratic Mandate - Debate Rekindled in Tamil Nadu

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Governor's Discretion vs Democratic Mandate Latest News

- The decision of the Governor of Tamil Nadu (Rajendra Arlekar) to **delay the swearing-in** of Tamilaga Vettri Kazhagam (TVK) leader (Vijay) as Chief Minister of Tamil Nadu has revived the constitutional debate over the extent of a Governor's discretionary powers vis-à-vis the democratic mandate.
- The controversy centres on the Governor reportedly asking TVK leader to **furnish proof** of support from at least 118 MLAs — the **majority mark** in the 234-member Assembly — before inviting him to form the government.

Political Background

- Tamilaga Vettri Kazhagam (TVK) emerged as the **single largest party** with **108** MLAs in the recently held Tamil Nadu assembly elections.
- The support from the Congress raises the tally to **113**, which is still short of the majority mark.

- **Traditionally**, the Governor invites the single largest party or coalition claiming majority to form the government and prove its strength through a floor test in the Assembly.
- The Governor's insistence on **prior proof** of majority has sparked criticism from opposition parties and constitutional experts.

Constitutional Position on the Governor's Powers

- **Article 164 of the Constitution:** Under this provision,
 - The Chief Minister is appointed by the Governor.
 - Other ministers are appointed on the advice of the Chief Minister.
 - Ministers hold office during the "pleasure of the Governor".
- **Interpretation:** However, in a parliamentary democracy, this "**pleasure**" is not personal discretion but is generally exercised according to constitutional conventions and democratic norms.

Conventional Procedure in Government Formation

- **Role of the Governor:** The Governor usually,
 - Invites the party/alliance staking claim to form government.
 - Administers oath to the Chief Minister-designate.
 - Appoints a pro-tem Speaker.
 - Directs the government to prove majority through a floor test.
- **Importance of floor test:** The floor of the Assembly is considered the only legitimate forum to determine majority support.

Supreme Court's Position on Floor Tests

- The judiciary has repeatedly emphasised that legislative majority must be tested on the Assembly floor and not decided subjectively by the Governor.
- **Karnataka crisis (2018):**
 - The BJP emerged as the single largest party.
 - Congress and JD(S) formed a post-poll alliance and approached the SC after the then Governor (Vajubhai Vala) invited B. S. Yediyurappa to form the government.
 - The Governor granted BJP 15 days for a floor test.
 - **SC intervention:** A Bench headed by the then CJI (Dipak Misra) refused to stay the swearing-in. However, the Court advanced the floor test to within **36 hours** amid allegations of horse-trading.
 - **Outcome:** The BJP failed to prove majority, after which the Congress-JD(S) alliance formed the government.
- **Uttarakhand crisis (2016):** The SC reiterated that the floor test is the "**ultimate**" constitutional mechanism to establish majority and directed then Congress CM (Harish Rawat) to prove majority on the floor of the house.

Core Constitutional Debate - Governor's Discretion vs Democratic Mandate

- **Arguments supporting the Governor:**

- The Governor must ensure a stable government.
- Preventing opportunistic defections and political instability is part of the constitutional responsibility of the Governor.
- Seeking proof of support may be viewed as a safeguard against uncertainty.

- **Arguments against the Governor's move:**

- The Governor cannot impose **subjective** political standards beyond constitutional convention.
- Delaying swearing-in undermines the democratic verdict.
- The Governor's role is largely ceremonial and constitutional, not political.
- Former Union Law Minister Ashwani Kumar described the move as a "graceless stratagem", "a political outrage", and "**a constitutional heresy**".

Key Constitutional and Governance Issues

- **Ambiguity in Governor's discretion:** The Constitution does not clearly define the precise limits of gubernatorial discretion in a hung Assembly.
- **Allegations of political bias:** Governors are often accused of acting in favour of the Union government or a particular political party.
- **Delay in government formation:** Unnecessary delays may create political instability, governance vacuum, and scope for horse-trading.
- **Weakening of federal principles:** Frequent disputes involving Governors raise concerns regarding cooperative federalism, autonomy of States, and misuse of constitutional offices.

Way Forward

- **Establish clear constitutional conventions:** A **codified order** of preference for inviting parties to form government can reduce ambiguity.
- **Mandatory time-bound floor tests:** The Supreme Court's emphasis on quick floor tests should become a standard constitutional practice.
- **Political neutrality of Governors:** Governors must function as impartial constitutional heads, guardians of democratic values, not political actors.
- **Implement recommendations:** For example, **Sarkaria** and **Punchhi** commissions recommended non-partisan appointment of Governors, limited discretionary powers, and respect for federal balance.
- **Judicial oversight:** Courts should continue to ensure that constitutional morality prevails over partisan considerations.

Conclusion

- The Tamil Nadu episode once again highlights the recurring tension between constitutional discretion and democratic legitimacy in India's parliamentary system.
- While the Governor possesses certain constitutional powers, these must operate within the framework of constitutional morality, federalism, and democratic conventions.
- The Supreme Court's consistent emphasis on floor tests underlines a fundamental principle: the true test of majority lies **not** in **Raj Bhavan**, but on the **floor** of the legislature.

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