Dissolution of Jammu and Kashmir Assembly

What is the issue?

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- Jammu and Kashmir Governor Satya Pal Malik recently dissolved the State Assembly, amidst tussle in forming government.
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- The Governor’s decision seems to lack proper constitutional and legal rationality.
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What was going on in J&K?

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- The Jammu and Kashmir State has been under Governor’s rule since June.
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- It was the time when BJP withdrew from the coalition and Chief Minister Mehbooba Mufti, of Peoples Democratic Party, resigned.
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- The PDP and the National Conference had not initiated any move to form a popular government for months.
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- They had been idle for long, favouring fresh elections.
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- The Governor’s move came soon after PDP leader Mehbooba Mufti staked claim to form government.
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- She cited a collective strength of 56 MLAs in the 87-member House, with the support of the National Conference and Congress.
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- A separate claim to form a government was made by Sajad Gani Lone of the two-member People’s Conference.
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- He claimed support of the BJP and 18 MLAs from other parties.
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What is the governor's rationale?

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- Mr. Malik’s stated reasons for his action are
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i. extensive horse trading (vote trading)
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ii. the possibility that a government formed by parties with “opposing political ideologies” would not be stable
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- He also mentioned the fragile security scenario in the state, which calls for a stable and supportive environment for security forces.
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Is the Governor's decision justified?

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- The Governor ought to have known that the Supreme Court has earlier disapproved these kinds of reasoning.
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- In Rameshwar Prasad (2006) case, the then Bihar Governor Buta Singh’s decision to dissolve the Assembly was held to be illegal and mala fide.
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- In Bihar, the Assembly was then in suspended animation as no party or combination had the requisite majority.
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- **Alliances** - With the BJP backing Sajjad Lone, the PDP may have sensed a danger to the unity of its 29-member legislature party.
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- It thus agreed to an unusual alliance with its political adversaries.
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- Describing such an alliance as opportunistic is fine as a political opinion; but it cannot be the basis for constitutional action.
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- As held by the Court, a Governor cannot shut out post-poll alliances altogether as one of the ways in which a popular government may be formed.
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- **Horse trading** - The court had said unsubstantiated claims of horse-trading or corruption for government formation cannot be cited as reasons to dissolve the Assembly.
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- Delay in forming government cannot be the reason for the Governor to dissolve the 87-member House.
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- Notably, the parties were just about to come together to form a likely 56-member bloc (more than required).
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- But the Governor has dissolved the Assembly without giving any claimant an opportunity to form the government.
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- Clearly, the J&K Governor's reasoning is irrelevant and the decision is violative of constitutional law and convention.
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What should have been done?

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- The court has said it was the Governor’s duty to explore the possibility of forming a popular government.
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- He could not dissolve the House solely to prevent a combination from staking its claim.
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- Mr. Malik’s remarks that the PDP and the NC did not show proof of majority or parade MLAs indicate a disregard for the primacy accorded to a floor test.
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- In the interest of political stability in this sensitive State, it is essential that democratic processes are strengthened.

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Source: The Hindu, Indian Express

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