Governor's Role in Hung Assembly

Mains: *GS – II – Polity & Governance*

Why in News?

In the Tamil Nadu 2026 election, TVK emerged as the single largest party & asked to form the government; the Governor refused to swear in the TVK leader immediately and insisted on physical letters of support from at least 118 MLAs.

What is a Hung Assembly?

- **Hung Assembly** – It occurs when *no single political party or pre-poll alliance* wins an *absolute majority* of seats in an election.
- Because no one crosses the halfway threshold needed to govern independently, it creates a fractured mandate requiring post-election negotiations, coalition building, or the formation of a minority government.
- **Key Constitutional Provisions**
- **Article 163** – The Governor acts on the aid and advice of the Council of Ministers, except where he must use discretion.
- **Article 163(2)** – If any question arises whether a matter requires the Governor's discretion, his decision is final and cannot be called in question.
- **Article 164(1)** – It provides that the Chief Minister of a State shall be appointed by the Governor, while other ministers shall be appointed by the Governor on the advice of the Chief Minister.

What is the role of the Governor in the formation of a new government if there is a hung Assembly?

- **Clear Majority** – When a single party secures a clear majority in the Assembly, the Governor invites the leader of that legislative party to form the government.
- **No Clear Majority** – If no party secures a majority, the Governor exercises his/her discretion in appointing the Chief Minister.
- The Governor must proceed legally and explore all possibilities with political parties, groups, and independent MLAs within a reasonable time to maintain the constitutional machinery in the State.
- **Reasonable Time** – The Constitution has *not defined the 'reasonable time'* a Governor could take to explore possibilities for forming a responsible & stable government.
- But the Governor *cannot wait indefinitely* and, in the process, lay the field open for horse-trading.
- **Last Resort** – Only if all alternatives fail and to avoid any violence, as a last resort, the

Governor initiate the declaration of *President's rule* in the State under Article 356 of the Constitution.

What is the Procedure for appointing the Chief Minister in a hung Assembly?

- **No settled procedure** – The Constitution *does not provide a settled procedure* for a Governor to choose a Chief Minister in a hung Assembly.
- Though constitutional conventions dictate that the Governor's actions must be guided by moderation.
- **Various Commissions' Recommendations** – The Sarkaria Commission (1987) & the Punchhi Commission (2010) recommended the manner in which the Chief Minister may be appointed in case no party enjoys a majority in the Assembly.

Order of Preference

- **Pre-poll alliance with majority** – If a coalition formed before elections has a majority, the Governor invites them first.
- **Single largest party with support** – If no alliance has a majority, the largest party may be invited to prove a majority with the external support of others.
- **Post poll coalition with all partners** – Parties forming a coalition after elections, with all partners joining the government, are next in line.
- **Post poll alliance with outside support** – Some parties join the government, and others extend support from outside.

What are the key judgements related to this?

- **S. R. Bommai v. Union of India (1994)** – The bench said that the Constitution does not create an obligation that the political party forming the government should necessarily have a majority in the Assembly.
- So, the *minority governments are permissible*, provided they *enjoy the confidence* of the House.
- The SC held that the *'floor of the House'* is the constitutionally designed forum for testing the majority support enjoyed by a government, reiterated in the Rameshwar Prasad case (2006).
- **B.R. Kapur (2001)** – The Governor may dissolve the Legislative Assembly *under Article 174(2)(b)* even before its first meeting if no party can form a government.
- **Rameshwar Prasad (2006)** – The Governor cannot remain in midpoint; must either appoint a government or dissolve the Assembly to prevent breakdown of constitutional machinery.
- It also reiterated that Governors cannot bypass the Assembly in determining the majority.

What are the issues?

- **Deviation from Conventions** – The Governors often bypass the recommended order of preference while appointing the CMs.
- **Example:**
- **Goa (2017) & Manipur (2017)** – Governors invited BJP-led post-poll alliances despite

Congress being the single largest party; these governments later proved their majority in the Assembly.

- **Karnataka (2018)** – The Governor invited the BJP as the largest party, ignoring the Congress-JD(S) post-poll alliance claim.
- **Maharashtra (2019)** – The Governor appointed a BJP-led coalition amid uncertainty of majority; CM resigned soon after, were unable to prove the required majority.
- **Partisan bias** – The Governors, as a nominal head of the State executive, are expected to act impartially, ensuring stability; however, seen as favouring the Union government's ruling party.
- **Undermining stability** – The appointments without a clear majority lead to short-lived governments.
- **Delay & horse-trading** – The indefinite waiting encourages unethical bargaining among MLAs.
- **Erosion of federalism** – The Governors acting as agents of the Centre weaken State autonomy.

What is the Way Forward?

- **Justice Kurian Joseph Committee report** – It was on Union-State relations, constituted by the earlier Tamil Nadu government.
- Key recommendations include
  - Incorporating a new schedule into the Constitution to codify the rules governing the Governor's use of discretionary powers.
  - This may be considered to provide a constitutional basis for the use of such discretionary powers.
  - It is imperative that the Governors exercise their discretionary powers in a bona fide and impartial manner, not as political agents.

To know about the **Floor Test**, click here

References

1. The Hindu | What is the Governor's role in a hung Assembly?
2. The Hindu | Governor's role in government formation

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