

1. Hung Assembly In Tamil Nadu 2026 – Polity

1. Why in News

1. Tamil Nadu 2026 elections produced hung Assembly
2. TVK (Vijay's party) won 108 seats, short of 118-seat majority in 234-seat House
3. No single party secured clear majority
4. Governor's constitutional role becomes crucial in government formation
5. Coalition negotiations and smaller parties hold key
6. Tests constitutional conventions and judicial precedents

2. What Is a Hung Assembly?

Definition

1. When no single party wins clear majority in state legislative elections
2. No party reaches halfway mark (50% + 1 seats) needed for majority
3. Tamil Nadu case – 234-seat House requires 118 seats for majority; TVK won 108
4. Creates political uncertainty requiring coalition arrangements

Consequences

1. Triggers –
 1. Coalition negotiations between parties
 2. Reliance on smaller parties or independents for support
 3. Bargaining for ministerial berths, policy commitments
2. Governor steps in as key constitutional officer
3. Decides who gets first invitation to form government
4. Uncertainty until stable government demonstrated through floor test

3. Constitutional Provisions

Article 163 – Aid and Advice to Governor

1. Governor normally acts on Council of Ministers' aid and advice
2. Exception – Matters where Governor must/may use discretion
3. Discretionary powers invoked in special circumstances
4. Hung Assembly situations fall under discretionary domain

Article 164(1) – Appointment of Chief Minister and Ministers

1. Governor appoints Chief Minister and Council of Ministers
2. In normal majority – Automatic appointment of majority leader
3. In hung Assembly – Governor wields discretion in inviting parties to form government
4. Must assess claims, support letters, likelihood of stable government
5. CM appointed first, other ministers on CM's advice

Article 163(2) – Finality of Governor's Discretion

1. If any question arises whether matter requires Governor's discretion, Governor's decision is final
2. Cannot be called in question in any court
3. Protects Governor's constitutional role from frequent litigation
4. However, arbitrary exercise subject to judicial review (post S.R. Bomani)

Article 164(2) – Collective Responsibility

1. Council of Ministers collectively responsible to Legislative Assembly
2. Must maintain confidence of House
3. Loss of confidence requires resignation or dismissal

Article 174 – Governor's Power to Summon, Prorogue, Dissolve Assembly

1. Governor summons Assembly for floor test
2. Can dissolve Assembly if no government formation possible
3. Dissolution subject to constitutional propriety and judicial scrutiny

4. Role of Governor in Hung Assembly

Inviting Party to Form Government

1. Governor invites party/coalition that has people's mandate
2. Assesses which party/group can demonstrate majority support
3. Considerations –
 1. Number of elected members
 2. Pre-poll alliances
 3. Support letters from other parties/independents
 4. Stability prospects
4. Usually invites single largest party first (S.R. Bomani precedent)

Fixing Time for Oath and Floor Test

1. Governor fixes time to administer oath to Chief Minister designate
2. Stipulates timeline for proving majority on Assembly floor
3. Typically, 7-15 days given for floor test
4. Prevents prolonged uncertainty

Appointing Pro-tem Speaker

1. Pro-tem (temporary) Speaker appointed before regular Speaker election
2. Usually senior-most legislator among elected members
3. Functions –
 1. Administer oath to newly elected MLAs
 2. Conduct proceedings until regular Speaker elected
 3. Preside over floor test

Floor Test (Trust Vote)

1. Purpose – Find whether government retains confidence of House
2. Held when government suspected to have lost majority
3. Process –
 1. Confidence motion moved by CM or Opposition no-confidence motion
 2. Debate and voting among members
 3. Simple majority required
 4. Open voting (voice vote or division)
4. Only valid test of majority per S.R. Bomani
5. Governor cannot subjectively determine majority without floor test

President's Rule Recommendation (Article 356)

1. If Governor concludes no government can be formed under given Assembly composition
2. Can recommend President's Rule imposition to Central Government
3. Constitutional machinery failure
4. State government dismissed, Assembly dissolved or suspended
5. Governor administers state on President's behalf
6. Requires Parliament approval within 2 months
7. Subject to judicial review for misuse

5. Reports and SC Judgments on Governor's Role

Sarkaria Commission Report (1983)

Clear Majority Scenario

1. If single party has absolute majority, leader should automatically be asked to become CM
2. No Governor's discretion needed
3. Respects clear electoral mandate

Hung Assembly – Order of Preference

Governor should select CM from following in order of preference –

Pre-poll alliance with majority

1. Alliance formed before elections demonstrating to voters
2. Reflects clearer electoral mandate
3. Highest preference as voters knew about coalition

Largest single party with support

1. Party with most seats staking claim
2. Support from others including independents
3. Must demonstrate numbers through letters of support

Post-electoral coalition (partners join government)

1. Coalition formed after elections
2. All partners join government as ministers
3. Collective responsibility clearer

Post-electoral alliance (outside support)

1. Alliance where some parties in government, others support from outside
2. Supporting parties don't join Council of Ministers
3. Less stable than option 3
4. Lowest preference in hierarchy

Punchi Commission Report (2007)

Constitutional Neutrality

1. Broadly endorsed Sarkaria framework
2. Added emphasis – Governors must act with constitutional neutrality
3. Not as political agents of Central Government
4. Avoid partisan considerations

Floor Test Urgency

1. Floor test should be conducted as early as possible
2. Determines majority objectively
3. Prevents prolonged political uncertainty
4. Transparent demonstration of numbers

Pre-poll Alliance Priority

1. Pre-poll alliances prioritized over post-poll arrangements
2. Reflect clearer electoral mandate
3. Voters knew about coalition before voting
4. Greater legitimacy than opportunistic post-poll tie-ups

Supreme Court Judgments

S.R. Bomani vs. Union of India (1994) – Landmark

1. Holding – Governor must invite leader of party commanding majority, or single-largest party/group to form government
2. Floor test is supreme test of majority, not Governor's subjective assessment
3. President's Rule subject to judicial review
4. Cannot be imposed arbitrarily
5. Majority must be tested on Assembly floor
6. Established floor test as constitutional imperative
7. Limited Governor's discretion from arbitrary exercise

Rameshwar Prasad vs. Union of India (2006)

1. Context – Bihar Assembly dissolution challenged
2. Court warned against premature dissolution
3. Political parties must be given fair opportunity to form government
4. Cannot dissolve Assembly without exhausting government formation possibilities

5. Governor should not pre-empt political process
6. President's Rule in Bihar quashed, fresh floor test ordered

Uttarakhand Crisis (2016) and Similar Cases

1. SC underlined floor test as "ultimate" option
2. Directed then Congress CM Harish Rawat to prove majority on floor of house
3. Cannot avoid floor test claiming majority through other means
4. Open voting ensures transparency and accountability
5. Courts can order floor test if Governor delays or avoids

Nabam Rebha vs. Deputy Speaker (2016)

1. Governor cannot act arbitrarily bypassing elected government
2. Reinforced limits on Governor's discretion
3. Strengthened Assembly's autonomy

Other Relevant Cases

1. Alagiri Sampath (2016) - Governor's discretion in hung Assembly
2. Shivraj Singh Chouhan vs. Speaker (2020) - Speaker cannot indefinitely delay floor test

6. Constitutional and Political Principles

Democratic Principles

1. Majority rule fundamental to parliamentary democracy
2. Electoral mandate must be respected
3. People's will through elected representative's paramount
4. Stability and governability important

Constitutional Morality

1. Governor must act impartially
2. Not as political agent of ruling party at Centre
3. Respect federal structure
4. Constitutional propriety over political expediency

Transparency and Accountability

1. Floor test ensures public, transparent demonstration of majority
2. Prevents backroom deals without accountability
3. MLAs' votes recorded
4. Anti-defection law (Tenth Schedule) applicable

Preventing Horse-Trading

1. Immediate floor test prevents prolonged negotiation periods
2. Reduces opportunity for inducements to MLAs
3. Open voting deters defections (though secret ballot debate exists)

7. Tamil Nadu 2026 Scenario - Governor's Options

Assessment of Claims

1. TVK with 108 seats (short of 118 majority)
2. Governor will assess -
 1. Can TVK secure support of additional 10+ MLAs?
 2. Are there pre-poll alliances claiming majority?
 3. What about other large parties' claims?
 4. Support letters from parties/independents

Application of Sarkaria Hierarchy

Option 1 - If pre-poll alliance has majority → Invite alliance leader

Option 2 - If TVK (largest party) stakes claim with support → Invite Vijay as CM with time-bound floor test

Option 3 - If post-poll coalition emerges with partners joining government → Invite coalition leader

Option 4 - If post-poll alliance with outside support → Last preference

Floor Test Mandate

1. Whoever invited must prove majority within stipulated time (typically 7-15 days)
2. Open voting in Assembly
3. Simple majority (118 of 234) required
4. Anti-defection law prevents party-hopping for office

If All Fail

1. If no stable government possible, President's Rule recommendation
2. Subject to Constitutional and judicial scrutiny
3. Parliament approval needed

Challenges and Concerns

Governor's Impartiality Questions

1. Perception of partisan behaviour if Governor Favors Centre's ally
2. Past instances of controversial invitations
3. Need for objective criteria application

Horse-Trading and Defections

1. Inducements to MLAs in hung situations
2. Money, ministerial positions offered
3. Anti-defection law loopholes (bulk defections of 2/3rd exempt)

Delayed Floor Tests

1. Prolonging floor test allows manipulation time
2. SC has intervened ordering immediate tests

Constitutional Crisis Potential

1. Assembly dissolution vs. government formation attempts
2. Conflicting claims and litigation
3. Political instability affecting governance

8. Way Forward

Strict Timelines

1. Floor test within maximum 7 days of oath
2. Prevents prolonged uncertainty and manipulation
3. Judicial monitoring if needed

Objective Criteria Application

1. Governor follows Sarkaria-Punchi hierarchy strictly
2. Documents reasoning transparently
3. Reduces perception of bias

Strengthening Anti-Defection Law

1. Close loopholes permitting bulk defections
2. Disqualify MLAs switching for office immediately
3. Stricter penalties

Electoral Reforms

1. Encourage pre-poll alliances declaring CM candidate
2. Voters make informed choices
3. Reduces post-poll opportunism

Constitutional Amendment Consideration

1. Some suggest limiting Governor's discretion further
2. Automatic invitation to single largest party
3. Fixed short timeline for floor test

9. Conclusion

Hung Assembly in Tamil Nadu 2026 with TVK's 108 seats (short of 118 majority) activates Governor's crucial constitutional role. Following S.R. Bomani principle, Governor must invite single-largest party or coalition demonstrating majority with time-bound floor test as supreme arbiter. Sarkaria-Punchi hierarchy prioritizes pre-poll alliances over post-poll arrangements. Governor must act with constitutional neutrality avoiding political agency. Floor test within 7-15 days ensures transparency, prevents horse-trading, respects democratic principles. If no stable government possible, President's Rule recommendation subject to judicial review. Constitutional framework balances Governor's discretion with democratic accountability ensuring people's mandate translated into stable governance.

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