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# **POWER OF GOVERNOR TO DISSOLVE STATE ASSEMBLY UNDER ARTICLE 174 OF THE INDIAN CONSTITUTION**

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## **ABSTRACT**

The Governor of the States in India, can exercise certain Discretionary Powers given under Article 174 of the Indian Constitution to summon, prorogue, and dissolve the State Legislature. While the Governor generally functions on the aid and advice of the Council of Ministers, there are specific circumstances under which discretionary powers may be exercised. While intended to uphold democratic governance, the exercise of this power has often raised concerns regarding Constitutional Propriety and Political Neutrality. Through an analysis of Constituent Assembly debates, landmark Supreme Court rulings, including Rameshwar Prasad, Nabam Rebia, and Shivraj Singh Chauhan and Controversial case studies from states like Jharkhand, Maharashtra, and Arunachal Pradesh, the paper shows the potential for misuse of the Governor's discretion. Taking insights from key commission reports (Sarkaria, Punchhi, NCRWC), the study recommends the need to codify and limit this power to ensure it aligns with democratic norms and federal Principles.

## Introduction

The Governor plays a crucial role in maintaining India's democratic and constitutional framework as the head of state. "Under Constitution of India Article 174(2)(b) the Governor has the authority to dissolve the Legislative Assembly."<sup>1</sup> While this power is essential for the smooth functioning of state governance, its discretionary nature has often led to political controversies.<sup>2</sup>

According to Article 174 of the Constitution, the Governor has been empowered to summon, prorogue, and dissolve the State Assembly. This power is a crucial aspect of the Governor's responsibility in maintaining the effective operation of the democratic process within the state. Under usual conditions, the Legislative Assembly operates until the end of its designated tenure, typically five years from its first sitting. Premature dissolution of the Assembly is not a common practice and generally takes place only in specific situations.<sup>3</sup>

However, there are situations where the Governor may be required to dissolve the Legislative Assembly before its scheduled term ends. One such instance arises when the ruling government no longer holds a majority in the House, thereby rendering it incapable of effectively governing the state. In a parliamentary system of government, the legitimacy of the ruling party or coalition is contingent upon its ability to hold the Legislative Assembly's majority. If, due to defections, resignations, or withdrawal of support by alliance partners, the ruling party is reduced to a minority and is unable to prove its majority on the floor of the house, the Governor has the constitutional authority to take appropriate action.<sup>4</sup>

In such a scenario, the Governor usually explores the possibility of forming an alternative stable state government by inviting a different leader of political party or coalition that may be able to command the confidence of the House. If no such viable alternative emerges, and it becomes evident that no party or group can provide a stable government, "the Governor may exercise the discretionary power to dissolve the Legislative Assembly." This dissolution is usually followed by the imposition of President's Rule under Article 356, subject to approval by the

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<sup>1</sup> Constitution of India art. 174, cl. 2(b)

<sup>2</sup> A. Pankaj, Discretionary Powers of Governor—III: An Interpretation from Federal Perspective, 64 Indian J. Pub. Admin. 49 (2018).

<sup>3</sup> J.N. Pandey, *The Constitutional Law of India* (51st ed. 2014).

<sup>4</sup> Ibid

Parliament, or by conducting fresh elections to reconstitute the House with a renewed mandate from the electorate.<sup>5</sup>

The discretionary power of the Governor in this regard has been a subject of debate and judicial scrutiny. Various Supreme Court judgments have emphasized that the Governor must act in a fair, non-partisan, and constitutional manner while exercising this power.<sup>6</sup> The dissolution of the Assembly should not be used as a tool for political advantage but should be exercised only when it is evident that the continuation of the House is not possible due to the lack of a stable government. Thus, while the Governor does possess the authority to dissolve the Legislative Assembly under exceptional circumstances, this power must be exercised with due regard to constitutional principles, democratic norms, and the interests of governance and stability within the state.<sup>7</sup>

### **Constitutional Framework**

Article 174 of the Indian Constitution empowers the Governor to summon, prorogue, and dissolve the Legislative Assembly. While these actions are generally taken on the aid and advice of the CM and his Ministers, there have been instances where Governor has exercised discretion.<sup>8</sup>

### **When Inviting a Party to Form the Government (Hung Assembly).**

When no single party secures a clear majority in the Legislative Assembly elections, the Governor must decide whom to invite to form the government. The S.R. Bommai case (1994)<sup>9</sup> and Rameshwar Prasad case (2006)<sup>10</sup> ruled that the Governor must ensure that the invited party or coalition commands a majority on the floor of the House. If no party can establish its majority, the Governor may advise the imposition of President's Rule pursuant to Article 356.

### **Dissolution of the Legislative Assembly under Article 174(2)(b).**

The Governor cannot dissolve the state Assembly on their own discretion under normal

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<sup>5</sup> Ibid

<sup>6</sup> To Kill a Healthy Democracy? The Discretionary Powers of the Governor, NUJS Const. L. Soc'y Blog (Sept. 16, 2020), <https://wbnujscls.wordpress.com/2020/09/16/to-kill-a-healthy-democracy-the-discretionary-powers-of-the-governor/>

<sup>7</sup> M.P. Singh, Discretionary Powers of the Governor of a State in India, 63 Indian J. Pub. Admin. 372 (2017).

<sup>8</sup> Constitution of India art. 174.

<sup>9</sup> S.R. Bommai v. Union of India, (1994) 3 S.C.C. 1

<sup>10</sup> Rameshwar Prasad v. Union of India, (2006) 1 SCR 562

circumstances, as the power lies with the Chief Minister and the Council of Ministers. However, in cases where, the government loses its majority and is unable to function, and no alternative government is possible, the Governor may propose dissolving the Assembly and initiating fresh elections.

### **Constitutional Assembly Debates**

Draft Article 153 (now Article 174) was debated on June 2, 1949, establishing the framework for State Legislature sessions. The members proposed an amendment to clause (2)(c), supporting that the Governor should only dissolve the Legislative Assembly if “he was satisfied that the administration was failing and the ministry had become unstable.” The argument was that, without clear circumstances, the Governor might dissolve the House for political reasons. However, this proposal was rejected with minimal discussion. Additionally, the Chairman of the Drafting Committee recommended the deletion of clause (3), citing its inconsistency with the concept of a Constitutional Governor. The Assembly accepted this suggestion, and the amended Draft Article was adopted on the same day.<sup>11</sup>

During the Constituent Assembly Debates, members expressed differing views on the discretionary power of the Governor.

#### **1. Mohd. Tahir’s Proposal for Specifying Grounds for Dissolution**

Mohd. Tahir proposed an amendment stating that “dissolution should occur only if the Governor is satisfied that the administration is failing and the ministry has become unstable (CAD 8.97.204).” He argued that the absence of specific conditions could lead to arbitrary dissolution by Governors who disagreed with the ruling party’s views. He suggested that explicit conditions such as maladministration or ministerial instability should be included to prevent misuse of power. However, the amendment was negatived, meaning the discretion of the Governor remained undefined in the Constitution.<sup>12</sup>

#### **2. Dr. B.R. Ambedkar’s Amendment to Remove Governor’s Discretion**

Dr. B.R. Ambedkar moved an amendment to omit Clause (3) of Article 153 (now part of Article 174), which explicitly stated that the Governor could exercise discretion in dissolving the

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<sup>11</sup> Constituent Assembly Debates, vol 8, 2 June 1949

<sup>12</sup> Ibid

Assembly (CAD 8.97.207). He argued that “the clause was inconsistent with the role of a constitutional Governor, as envisaged in a parliamentary democracy by deleting this clause, it was made clear that the Governor was not to exercise discretionary powers independently in dissolution matters.” The amendment was adopted (CAD 8.97.224), reinforcing the principle the Governor should typically act on ministerial aid and advice.<sup>13</sup>

### **3. H.V. Kamath’s Concerns on Lack of Explicit Ministerial Advice Clause**

H.V. Kamath raised a critical question regarding whether the Constitution explicitly bound the Governor to accept ministerial advice (CAD 8.97.210-215). He pointed out that “Article 143 (now Article 163) mentioned a Council of Ministers to aid and advise the Governor, but did not mandate that the Governor must always follow this advice.” He warned that without explicit language; the Governor might interpret dissolution as an independent power. Kamath suggested that the Constitution should clarify that the Governor must seek the Chief Minister’s counsel prior to dissolving the Assembly.<sup>14</sup>

### **Judicial Interpretation**

#### **State of Rajasthan v. Union of India (1977)**

The Supreme Court considered whether the Governor’s discretion in dissolving the State Legislative Assembly under Article 174(2)(b) could be overridden by the Union Government’s directives. The petitioners argued that the dissolution of State Assemblies should solely be within the Governor’s jurisdiction, acting on the advice of the State Council of Ministers. The Court clarified that while the Governor has discretion, the broader framework of constitutional governance and the powers under the Article 356 must also be considered. The Court emphasized that “judicial review of the Governor’s discretion is limited, if the dissolution is within constitutional boundaries.”<sup>15</sup>

#### **Rameshwar Prasad v. Union of India (2006)**

The judgment examined the Governor’s discretionary power under the Article 174(2)(b) of Constitution to dissolve the Legislative Assembly, particularly whether an Assembly can be

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<sup>13</sup> Ibid

<sup>14</sup> Ibid

<sup>15</sup> State of Rajasthan v. Union of India, (1977) 3 S.C.C. 592

dissolved before its first meeting. The petitioners argued that under Article 172, an Assembly's five-year term begins from its first meeting, making premature dissolution unconstitutional. The Court analysed how Article 174 interacts with Article 356 (President's Rule) and noted that dissolving an Assembly before Parliament reviews a proclamation under Article 356 could be problematic. The judgment also referred to Constituent Assembly Debates, which emphasized limiting the Governor's discretion to prevent political misuse.<sup>16</sup>

### **Pema Khandu v. Nabam Rebia (2016)**

The key case relating to the Governor's discretionary powers under Article 174, revolved around whether the Governor could summon and advance an Assembly session without the Chief Minister's recommendation. The Apex Court examined if the Governor needed the constitutional authority to act unilaterally, without the aid and advice of the Council of Ministers. The Court ruled that the Governor's powers under Article 174 are not absolute and that he must act on the Chief Minister's advice when summoning, proroguing, or dissolving the Assembly. It emphasized that the Governor cannot interfere in legislative matters or act as a political player, reaffirming that, except in exceptional circumstances like a breakdown of constitutional machinery under Article 356, the Governor must respect democratic principles and the authority of the elected government.<sup>17</sup>

By striking down the Governor's unilateral action, the Court reinstated the dismissed Congress government, declaring that the dissolution of Assembly was unconstitutional. The ruling set a crucial precedent in limiting the Governor's discretionary powers, ensuring that Article 174 is not misused for political reasons. The Court stressed that the Governor cannot override the democratic process under the pretext of maintaining stability, reinforcing federalism and constitutional governance. The case clarified that Article 174 does not grant unchecked power, emphasizing the neutrality of the Governor's office and safeguarding state autonomy within India's federal structure.

### **Shivraj Singh Chauhan v. Speaker Madhya Pradesh & Ors (2020)**

The Governor exercises the power to summon and prorogue the House based on the 'aid and advice of the Council of Ministers. However, if the Governor has reason to believe that the

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<sup>16</sup> *Supra* note 9

<sup>17</sup> Pema Khandu & 10 Ors v. Nabam Rebia, AIR 2016 (NOC) 519 (Gau.)

Chief Minister-led Council of Ministers has lost the confidence of the House, constitutional propriety necessitates resolving the matter through a floor test.’ The powers conferred upon constitutional functionaries are subject to judicial review. If the Governor’s discretion in calling for a floor test is challenged in court, it is not exempt from judicial review.<sup>18</sup>

### **Case Studies on Controversial Use of Discretionary Powers**

#### **Jharkhand (2005)**

The Jharkhand Mukti Morcha (JMM)-led coalition had the numbers to form the government, but Governor Syed Sibtey Razi controversially invited the BJP, led by Arjun Munda, to form government, despite the political party lacking majority support. This decision was widely criticized as a misappropriation of the Governor’s discretionary power under Article 164, which requires that the CM be appointed based on legislative majority.<sup>19</sup>

After the Supreme Court's involvement, a floor test was mandated, during which the BJP was unable to demonstrate its majority. Consequently, the JMM-led coalition, with Sibhu Soren as Chief Minister, was invited to form the government, upholding constitutional principles of legislative supremacy over governors’ discretion. The case reaffirmed that Governors must act in a non-partisan manner, ensuring democratic legitimacy in government formation.<sup>20</sup>

#### **Maharashtra (2019)**

After the Assembly elections, the Bhartiya Janta Party, though the largest party, failed to secure a majority. The NCP-Congress-Shiv Sena coalition claimed majority support. Governor Bhagat Singh Koshyari revoked President's Rule and swore in Devendra Fadnavis (BJP) as Chief Minister in a midnight decision, sparking criticism of procedural irregularities. Following a petition by Shiv Sena, NCP, and Congress, the Apex Court intervened and ordered a floor test within 24 hours, emphasizing the Governor’s role as a constitutional authority, not a political player. Before the test, Fadnavis resigned on 26 November 2019, admitting lack of majority, and Uddhav Thackeray (Shiv Sena) was sworn in as CM on 28 November 2019.<sup>21</sup>

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<sup>18</sup> Shivraj Singh Chouhan v Speaker, Madhya Pradesh Legislative Assembly (2020) 17 SCC 1

<sup>19</sup> V. Joy, The Use and Abuse of Discretionary Powers of Governor in Formation of Ministry in a State in India, 64 Indian J. Pub. Admin. 228 (2018).

<sup>20</sup> S. Kumar, Jharkhand Assembly Elections 2005: Little Hope for the BJP, 40 Econ. & Pol. Wkly. 346 (2005).

<sup>21</sup> Shiv Sena v Union of India [2019] 10 SCC 809

## **Arunachal Pradesh (2016)**

The Arunachal Pradesh political crisis (2016) arose when the Congress-led government, headed by Chief Minister Nabam Tuki, faced internal dissent. When Governor J.P. Rajkhowa moved the Assembly session forward without the Chief Minister's approval, the situation worsened and a string of political unrest resulted in the Congress government's downfall.<sup>22</sup>

The Governor's unilateral action under Article 174 was challenged in the Supreme Court, which in *Nabam Rebia v. Deputy Speaker*, (2016),<sup>23</sup> held that the Governor cannot independently summon or advance an Assembly session without the aid and advice of the Council of Ministers. The Court reinstated the Congress government, emphasizing that the Governor must act within constitutional boundaries and not interfere in political matters. The case reaffirmed that the "Governor's discretionary powers cannot override democratic principles and legislative processes."<sup>24</sup>

## **Law Commission Reports**

### **The Administrative Reforms Commission-I (1966-1970)**

The First Administrative Reforms Commission (ARC-I) focused on governance reforms, covering the tasks of the Governor. It recommended that Governor should act strictly as a constitutional head and not interfere in the state's day-to-day administration. The Commission stressed that discretionary powers should be exercised in a limited and constitutionally guided manner. With respect to Article 174, ARC-I stressed that the authority to dissolve or summoning the House should be exercised based on the aid and advice from Ministerial Council, ensuring that the "Governor does not use it arbitrarily to favour or destabilize a government."<sup>25</sup>

### **Rajamannar Committee (1971)**

The Tamil Nadu government established the Rajamannar Committee, which expressed

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<sup>22</sup> President's Rule: Judgment Summary, Supreme Court Observer (July 13, 2016), <https://www.scobserver.in/reports/presidents-rule-judgment-summary/> (accessed Mar. 1, 2025).

<sup>23</sup> *Nabam Rebia v Deputy Speaker* (2016) 8 SCC 1

<sup>24</sup> R. Sen, *Arunachal Pradesh Deadlock: A Sign of Institutional Crisis*, ISAS Brief No. 404, Inst. of S. Asian Stud., Nat'l Univ. of Sing. (Feb. 5, 2016), <http://southasiandiaspora.org> (accessed Mar. 1, 2025).

<sup>25</sup> First Administrative Reforms Commission, *Report of the First Administrative Reforms Commission (1966–1970)* (Government of India 1966).



disapproval of the 'governor's discretionary powers.' To prevent political abuse and mitigate the risk of such exploitation, it was suggested that the President's Rule (Article 356) be repealed and that the governor's discretionary powers be reduced to strengthen the federal principles. Furthermore, it advocated for a significant curtailment of the discretionary powers available to the governor. Considering the constitutional ethos, the Rajamannar Committee stated that the governor of the state should not consider himself an agent of the center but play his role as the constitutional head of the State.<sup>26</sup>

#### Sarkaria Commission Report (1983)

The Sarkaria Commission, one of the most comprehensive reviews of Centre-State relations, examined the discretionary powers of the Governor in depth. It highlighted that "the Governor should act as a link between the Centre and the States but not as an agent of the Union Government." Any concerns regarding the method of securing the majority should be addressed through legal and constitutional mechanisms.<sup>27</sup>

The Commission advises that the Governor must make every possible effort to identify a party, alliance, or arrangement that commands broad support in the Assembly. The Governor's primary responsibility is to facilitate the formation of a stable government. Once a majority is established, the Governor must acknowledge the government's formation and cannot reject the majority claim based on personal judgment regarding the legitimacy of how it was secured.<sup>28</sup>

#### National Commission to Review the Working of the Constitution (NCRWC) (2002)

The Governor's discretionary powers are limited and must be exercised with caution, guided by reason, and in good faith. It makes clear that the Governor does not have extensive independent authority under Article 163, and their role should primarily be based on the aid and advice of the Council of Ministers, except in constitutionally mandated situations. The report also stresses that the Governor cannot act independently in nominating members to the Legislative Council or Assembly and should wait for a new government's formation in case of

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<sup>26</sup> Centre-State Relations Inquiry Commission, *Report of the Centre-State Relations Inquiry Committee* (Government of Tamil Nadu 1971).

<sup>27</sup> Sarkaria Commission on Centre-State Relations, *Report of the Commission on Centre-State Relations* (Gov't of India 1988).

<sup>28</sup> Ibid

a political crisis.<sup>29</sup>

The Governor can summon, prorogue, and dissolve the state assembly under Article 174, the report states that these functions must be performed on ministerial advice. The Governor should not unilaterally be dissolving the State Assembly unless a constitutional breakdown occurs, warranting President's Rule. The report also warns against delays in summoning the Assembly, as this could be misused for political advantage. Drawing from past commissions like the Sarkaria Commission, the report affirms that the Governor's discretion should be used within constitutional limits.<sup>30</sup>

### **Punchhi Commission Report (2010)**

The Punchhi Commission was set up to revisit Centre-State relations considering political developments in India. It made significant recommendations regarding the role and discretionary powers of the Governor. The report recommended that the Governor should maintain a distance from active politics, including at the local level, for a minimum of two years before their appointment and limiting the Governor's discretionary power in summoning the House. The Punchhi Commission clarified that the Governor does not have broad discretionary authority to act outside the Council of Ministers under Article 163. Any exercise of discretion must be limited, rational, carried out in good faith, and approached with caution. The report also suggested to introduce a fixed tenure for Governors to prevent political favouritism.<sup>31</sup>

### **Recommendations**

1. Codification of Discretionary Powers: Parliament should define the circumstances under which the 'Governor can dissolve the Assembly under Article 174' to prevent arbitrary actions.
2. Mandatory Floor Test: Governors should be constitutionally bound to call for a floor test before dissolving the Assembly. This ensures that the legislative process, not executive discretion, determines the fate of the state government. One recommendation can that a

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<sup>29</sup> National Commission to Review the Working of the Constitution, *Report of the National Commission to Review the Working of the Constitution* (Government of India 2002).

<sup>30</sup> Ibid

<sup>31</sup> M M Punchhi Commission, *Report of the Commission on Centre-State Relations* (Government of India, 2010)

fixed timeframe (e.g., 24 to 48 hours) should be specified for conducting the floor test to prevent undue delays or manipulation.<sup>32</sup>

3. **Judicial Review:** Any decision regarding dissolution should be subject to judicial scrutiny to prevent misuse. In *Rameshwar Prasad v. Union of India* (2006), the Supreme Court ruled that the Governor's recommendation for dissolution can be unconstitutional if not backed by proper reasoning.
4. **Consultative Mechanism:** Before exercising discretionary powers under Article 174, Governors should be required to consult the Chief Minister, legal experts, and constitutional authorities. Such a mechanism would reduce instances of politically influenced decisions and promote institutional checks and balances.

## Conclusion

The Discretionary Power of the Governor to dissolve the State Legislative Assembly under Article 174 is a significant constitutional function meant to ensure democratic stability. However, its misuse for political gains has led to legal and political controversies. Judicial rulings, such as *Rameshwar Prasad v. Union of India* (2006) and *Nabam Rebia v. Deputy Speaker* (2016), emphasize that the Governor's role is largely ceremonial and must align with parliamentary democracy. The Sarkaria Commission (1983), Punchhi Commission (2010), and NCRWC (2002) have all recommended limiting discretionary powers and enforcing clear constitutional guidelines.

Strengthening judicial review, mandating a floor test, codifying discretionary powers, and ensuring consultation with constitutional experts can help uphold democratic principles and Indian Federalism.

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<sup>32</sup> R. Arya & R.P. Singh, Governor's Power in Ensuring the Smooth Functioning of Constitutional Machinery, *Manupatra* (Jan. 22, 2021), <https://articles.manupatra.com/article-details/Governors-Power-in-Ensuring-the-Smooth-Functioning-of-Constitutional-Machinery>