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## Is the floor test constitutionally immoral and unjust? – An Analysis

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*The Indian Constitution does not stipulate that the political party that forms the government must hold a majority in the legislature. Instead, it stipulates that the Council of Ministers must enjoy the support of the legislature, which represents the will of the people. The collective accountability of the elected government to the legislature is upheld by the floor test. The Constitution's enshrined democratic principles require that the question of whether the Government has the support of the House be put to a vote in the Legislative Assembly, with the proviso that such a decision can only be made in exceptional circumstances, such as when there is an "all-pervasive atmosphere of violence" and the members of the House "cannot express their opinions freely."*

**Keywords:** *floor test, government, accountability.*

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### INTRODUCTION

The Floor Test is used for the testing of the majority, a majority required for forming a government. It is a procedure to check if the legislature has confidence in the executive. The legislature, which represents the will of the people, must have confidence in the ministers making up the executive, even if the constitution does not need a political party to have a majority forming the government. The House leader must submit to a trust vote to demonstrate

the majority in situations where it is contested. The entire House would be dissolved if the leader doesn't follow through; otherwise, he or she is required to resign from office. It can be the Central level or even the State level where the floor test can take place. If it is a coalition government then the CM is asked to move a vote of confidence to win a majority. In the absence of a clear majority, when there is more than one individual who's present for staking claim to form the government of his own then the Governor calls for a special session to check who has the majority of its members to form the government. Some legislators may be absent or choose to abstain from voting. The votes are then, considered based only on the MLAs who were present to vote.

### CONSTITUTIONAL PROVISIONS REGARDING THE FLOOR TEST

Governor is given the power to summon, dissolve and prorogue the state legislative assembly under Article 174 of the Constitution.<sup>1</sup> The Governor may dissolve the Assembly with the assistance and recommendation of the government, according to Article 174(2)(b)<sup>2</sup> of the Constitution. If the advice comes from a Chief Minister whose support is considered to be in question, the Governor can no doubt use his judgment in that case.<sup>3</sup> The Governor may summon the House and order a floor test under Article 175(2)<sup>4</sup> to determine if the government has the necessary number of members. However, Article 163 of the Constitution,<sup>5</sup> which states that the Governor acts on the assistance and advice of the Council of Ministers presided over by the Chief Minister, limits the Governor's ability to use the aforementioned powers. The Speaker has the authority to declare the happening of a floor test during a House session. However, the Governor may call for a floor test when the Assembly is not in session under his residuary powers under Article 163.<sup>6</sup>

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<sup>1</sup> Constitution of India, art 174

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

<sup>3</sup> *Ibid*

<sup>4</sup> Constitution of India, art 175(2)

<sup>5</sup> Constitution of India, art 163

<sup>6</sup> Apurva Vishwanath, 'Explained: In Maharashtra political crisis, powers of Governor, floor test law in the spotlight' (*Indian Express*, 2022) <<https://indianexpress.com/article/explained/explained-governor-powers-floor-test-law-under-spotlight-7985458/>> accessed 13 August 2022

## GOVERNOR'S DISCRETIONARY POWER

Article 163(1)<sup>7</sup> effectively restricts the Governor's discretionary powers to situations where the Constitution mandates that the Governor must act independently and with an independent mind. When the chief minister no longer has the backing of the House and his legitimacy is in question, the Governor may utilize his discretionary authority under Article 174.<sup>8</sup> The Governor and the opposition would at times come together for a floor test, in case there is a prevailing doubt that the chief minister has lost the majority.<sup>9</sup> It has also been repeatedly made clear by the courts that a floor test must be conducted as soon as possible whenever the majority of the ruling party is in doubt.<sup>10</sup>

## FLOOR TEST THROUGH THE EYES OF THE SUPREME COURT

*The Government in doubt can be asked to prove its majority by the Governor.* In *Shivraj Singh Chouhan v Speaker, Legislative Assembly of Madhya Pradesh and Ors.*<sup>11</sup> The Supreme Court made it clear that the Governor has the authority to order an incumbent Chief Minister to conduct a floor test to show the Legislature's confidence in their government.<sup>12</sup> In this connection, it is important to note that the Governor is also granted the constitutional authority to demand that the Council of Ministers<sup>13</sup> demonstrate their majority on the Floor of the house immediately following the conclusion of the general elections.<sup>14</sup> In the aforementioned decision, the Apex Court acknowledged that the majority of decisions that came before it dealt with floor tests that were requested at the time the government was formed, but it emphasized that the Governor is nonetheless competent to order a "floor test" of an existing Council.<sup>15</sup>

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<sup>7</sup> Constitution of India, art 163(1)

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

<sup>9</sup> Apurva Vishwanath (n 7)

<sup>10</sup> *Ibid*

<sup>11</sup> *Shivraj Singh Chouhan v Speaker, Legislative Assembly of Madhya Pradesh & Ors Writ Petition (C) No 439 of 2020*

<sup>12</sup> *Ibid*

<sup>13</sup> *Ibid*

<sup>14</sup> Apurva Vishwanath (n 7)

<sup>15</sup> *Shivraj Singh Chouhan* (n 12)

If a floor test is necessary during the initial stages of the formation of the government, a Protem Speaker is appointed to preside over it since the Speaker is not elected and the elected members of the legislature have not yet taken an oath. Conventionally, the Governor appoints the senior-most member of the House to serve as Protem Speaker.<sup>16</sup>

In *G. Parameshwara v Union of India (Karnataka assembly case 2018)*,<sup>17</sup> to conduct the floor test, the Supreme Court ordered the appointment of a Protem Speaker. The following steps were outlined by the Court in the Karnataka assembly case, which involved the question of whether the coalition held the majority shortly after the elections<sup>18</sup>:

- A. *“Pro-tem Speaker shall be appointed for the aforesaid purpose immediately.*
- B. *All the elected members shall take an oath tomorrow (19.05.2018) and this exercise shall be completed before 04.00 p.m.*
- C. *The Pro-tem Speaker shall conduct the Floor Test on 19.05.2018 at 04.00 P.M. to ascertain the majority.*
- D. *Adequate and sufficient security arrangements shall be made and the Director General of Police, State of Karnataka will himself supervise the said arrangements so that there is no lapse on this count whatsoever.”*<sup>19</sup>

In *Shiv Sena v Union of India*,<sup>20</sup> The Maharashtra Legislative Assembly's floor test for the formation of the government in 2019 was conducted following a similar procedure established by the Supreme Court.<sup>21</sup> When it became unclear whether the alliance had the majority soon after the 2019 general elections, Shiv Sena petitioned the Supreme Court. In response, the Court ordered the Governor to convene a floor test and set a timeframe for it.<sup>22</sup>

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<sup>16</sup> *Ibid*

<sup>17</sup> *Dr. G Parmeshwara v Union of India* (2018) Writ Petition (Civil) No 536 of 2018

<sup>18</sup> *Ibid*

<sup>19</sup> *Ibid*

<sup>20</sup> *Shiv Sena v Union of India* (2019) Writ Petition (Civil) No 1393 of 2019

<sup>21</sup> *Ibid*

<sup>22</sup> *Ibid*

*Conducted to protect the democratic values from 'Horse-Trading'*

The danger of horse-trading is the reason, as explained in the Shiv Sena case, why the floor test must be conducted as soon as possible. The Supreme Court believes that the best way to safeguard the value of democracy is through an urgent floor test. "In a situation wherein, if the floor test is delayed, there is a possibility of horse-trading, it becomes incumbent upon the Court to act to protect democratic values. An immediate floor test, in such a case, might be the most effective mechanism to do so", was said in order by the bench of Justices- NV Ramana, Sanjiv Khanna, and Ashok Bhushan.<sup>23</sup>

*Limitations put forth by the Supreme Court over the Governor's Discretionary Power*

In 2016, in *Nabam Rebia and Bamang Felix v Deputy Speaker case (the Arunachal Pradesh Assembly case)*,<sup>24</sup> the Supreme Court said that the power to summon the House is not solely vested in the Governor and should be exercised with the aid and advice of Council of Ministers and not at his own. The Supreme Court said that the power to summon the House is not solely vested in the Governor and should be exercised with aid and advice of the Council of Ministers and not on his own. The Court emphasized the fact that the Governor is not an elected official but rather the President's nominee, and that a nominee cannot exercise absolute power over the elected officials of the Houses of the State Legislature.<sup>25</sup> The strong democratic values inherent in the provision of the Constitution would not coexist happily with allowing the Governor to overrule the State Legislature or the State administration, especially given that the foundational idea of the Constitution is ministerial responsibility.<sup>26</sup>

In *Shivraj Singh Chouhan and Ors v Speaker, Madhya Pradesh Legislative Assembly & Ors in 2020*,<sup>27</sup> the Supreme Court confirmed the Speaker's authority to call for a floor test if it appears, at first glance, that the government has lost its majority. The Supreme Court laid its wordings,<sup>28</sup>

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<sup>23</sup> Apurva Vishwanath (n 7)

<sup>24</sup> *Nabam Rebia & Bamang Felix v Deputy Speaker & Ors* (2016) Writ Petition (Civil) No 6203-6204 of 2016

<sup>25</sup> *Ibid*

<sup>26</sup> *Ibid*

<sup>27</sup> *Shivraj Singh Chouhan* (n 12)

<sup>28</sup> *Ibid*

"The Governor is not denuded of the power to order a floor test where based on the material available to the Governor it becomes evident that the issue as to whether the government commands the confidence of the House requires to be assessed based on a floor test."<sup>29</sup>

## SUPREME COURT SUMMONS FOR THE FLOOR TEST

On several occasions, the Supreme Court had passed directions to conduct the floor test. In *Shiv Sena and Ors. v Union of India and Ors*, The Apex Court cited its earlier rulings to show that it had previously summoned the Assembly only to put the vote of confidence to the test. The Solicitor General had contended that Article 212 prohibits the Courts from monitoring the operations of the House.

In *Jagdambika Pal v Union of India*,<sup>30</sup> The Uttar Pradesh Assembly had to be called to account for using a composite floor test, the Supreme Court ordered. A composite floor test between the contending parties is necessary when more than one individual is vying for the position of Chief Minister to ascertain who has the support of the majority of the House.<sup>31</sup> The Supreme Court has occasionally instructed the performance of a floor test and requested that the entire hearing be videotaped for its review as a measure to maintain transparency.<sup>32</sup>

In *Union of India v Harish Chandra Singh Rawat and Anr.*,<sup>33</sup> The Principal Secretary, Legislative and Parliamentary Affairs was designated by the Supreme Court as an observer to ensure impartiality and make sure that complete objectivity is upheld during the floor test. The Court stated the following as the reason for appointing an observer: “..to save the sanctity of democracy which is the basic feature of our Constitution. The Court, being the sentinel on the qui vive of the Constitution is under the obligation to see that democracy prevails and not gets hollowed by individuals...The collective trust in the legislature is founded on the bedrock of the constitutional trust.

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<sup>29</sup> *Ibid*

<sup>30</sup> *Jagdambika Pal v Union of India & Ors* AIR 1998 SC 998

<sup>31</sup> *Ibid*

<sup>32</sup> *Ibid*

<sup>33</sup> *Harish Chandra Singh Rawat v Union of India & Anr* (2016) Writ Petition (M/S) No 795 of 2016

*This is a case where one side even in the floor test does not trust the other and the other claims that there is no reason not to have the trust. Hence, there is the need and there is the necessity to have a neutral perception..." - Union of India v Harish Chandra Singh Rawat, order dated 9th May 2016.<sup>34</sup>*

## **MEMBERS CAN'T BE COMPELLED TO ENSURE THEIR PRESENCE DURING THE FLOOR TEST**

The Chief Minister must find a majority of those in attendance and voting in a floor test. The Chief Minister and their Council of Ministers quit after the majority is not demonstrated. The Courts lack the authority to order that a floor test cannot be held if one or more Members are not still present in the Assembly. *"Whether or not to remain present is for the individual Members to decide and they would necessarily be accountable for the decisions which they take, both to their political party and their constituents."* - Justice D.Y. Chandrachud in *Shivraj Singh Chouhan v Speaker*.<sup>35</sup>

Political parties can, however, issue whips to ensure attendance/voting in the Assembly; non-compliance could result in disqualification. It must be made clear that the Governor lacks the authority to order a floor test without first deciding whether the Government commands the confidence of the House through independent verification. When the Governor is confident that the majority of the legislative assembly does not support the incumbent government, they will ask the Chief Minister to "face the Assembly and prove his majority within the shortest possible time."

*A lack of majority may be inferred from the Chief Minister's refusal to take the floor test*

Under a unanimous report from a committee of governors appointed by the president of India, which was cited in Justice BP Jeevan Reddy's decision in *S.R. Bommai v Union of India*,<sup>36</sup> if the chief minister disobeys the order to take a vote of confidence, the governor is required to take action to form a substitute ministry. Since the Chief Minister declined to take the exam, it may be assumed that the Legislature does not have trust in them.

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<sup>34</sup> *Ibid*

<sup>35</sup> *Shivraj Singh Chouhan* (n 12)

<sup>36</sup> *SR Bommai* (n 1)

The Apex Court has acknowledged that the Governor, as the ceremonial head of the executive, is given the authority to guarantee that the elected government retains the support of the Legislative Assembly, but that the executive's accountability to the legislature should not be compromised.

*“However, it is important to note that in directing a trust vote, the Governor does not favor a particular political party. The specific timing of a trust vote may inevitably tilt the balance towards the party possessing a majority at the time the trust vote is directed. All political parties are equally at risk of losing the support of their elected legislators, just as the legislators are at risk of losing the vote of the electorate.”*

- Justice D.Y. Chandrachud in *Shivraj Singh Chouhan v Speaker*<sup>37</sup>

***The satisfaction of the governor is subject to judicial review***

It should be kept in mind that the foundation for the Governor's pleasure is subject to judicial review. The Constitutional Courts can assess whether the Governor has "relevant and germane material" to order a floor test.

*“The decision of the Governor to do so is not so immune from judicial review and must therefore withstand the ability to be scrutinized on the touchstone of the circumstances being relevant, germane, and not extraneous, to the exercise of an exceptional power which is vested in the Governor.”* – said by Justice D.Y. Chandrachud in *Shivraj Singh Chouhan v Speaker*<sup>38</sup> If the governor has grounds to believe that the house no longer trusts the government, he or she may summon a special session of the house without the assistance and counsel of the Council of Ministers.

According to the **Sarkaria Commission's report**, the Governor should not dismiss a Council without putting it to the test in front of the Assembly. The Central Government established the Sarkaria Commission in 1983 to study the relationship between the centre and the state and make suggestions for changes within the constitutional framework. It was suggested that the

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<sup>37</sup> *Ibid*

<sup>38</sup> *Ibid*



Chief Minister call the House as soon as possible. The Governor may call a floor test for the Assembly within a fair amount of time if the Chief Minister declines, though.

The MM Punchhi Commission, established in 2007 with the same goals, reiterated the aforementioned opinion. The Governor was given the authority to summon, prorogue, or dissolve the State Legislature under Article 174 of the Constitution<sup>39</sup>. The Chief Minister may only execute the authority granted by Article 174 with the assistance and advice of the Council of Ministers listed in Article 163<sup>40</sup> as long as the Chief Minister has the confidence of the House. The Governor is unable to use their judgment because the Council's decision is binding.

In his ruling in *Nabam Rebia v Dy. Speaker, Arunachal Pradesh Legislative Assembly*,<sup>41</sup> Justice J.S. Kehar cited the treatise Practice and Procedure of Parliament by MN Kaul and SL Shakhder to make the following observation - if the Governor has reasons to believe that the Chief Minister and their Council of Ministers have lost the confidence of the House,<sup>42</sup> the Governor may exercise powers under Article 174 on his own, without any aid and advice.<sup>43</sup>

The floor test does not need to be postponed because of ongoing disqualification proceedings.<sup>44</sup> In *Shivraj Singh Chouhan v Speaker*, The Supreme Court further clarified that because the Speaker has not made a decision regarding the matter of Assembly members' resignations and the ensuing issue of defection under the Tenth Schedule of the Constitution—both of which pertain to different areas of constitutional law—the floor test need not be postponed. The Court made the following observations to highlight the need for the floor test:

*“Holding a trust vote is necessary to ascertain whether the Council of Ministers headed by the Chief Minister has the confidence of the House. The continuous existence of that confidence is crucial to the legitimacy and survival of the government. It is a matter, which can brook no delay since the authority of*

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<sup>39</sup> Constitution of India, art 174

<sup>40</sup> Constitution of India, art 163

<sup>41</sup> *Nabam Rebia* (n 25)

<sup>42</sup> *Ibid*

<sup>43</sup> Sohini Chowdhury, 'What Is A "Floor Test"? Explained With Important Supreme Court Judgments' (*Live Law*, 2022) <<https://www.livelaw.in/know-the-law/what-is-a-floor-test-explained-with-important-supreme-court-judgments-202546?infinite-scroll=1>> accessed 11 August 2022

<sup>44</sup> *Ibid*

*the government presided over by the Chief Minister depends on the Council of Ministers continuing to have faith in the legislative body as a collective entity. Particularly where the Members resigned in an expression of a lack of faith in the existing government, the convening of a floor test is the surest method of assessing the impact of the resignations on the collective will of the house.” – said Justice D.Y. Chandrachud in Shivraj Singh Chouhan v Speaker.<sup>45</sup>*

In 2019, in *Pratap Gouda Patil and Others v State of Karnataka and Others*,<sup>46</sup> The Karnataka Assembly case, the court permitted dissident MLAs to forego the floor test. The Supreme Court refused to set a deadline for the speaker to decide whether to accept the dissident MLAs' resignations, allowing the Karnataka Legislative Assembly to proceed with the upcoming floor test. The Bench highlighted the following as it issued the order<sup>47</sup>:

*“The imperative necessity at this stage is to maintain the constitutional balance and the conflicting and competing rights that have been canvassed before us.”<sup>48</sup>*

The renegade MLAs are free to skip the floor test procedures, the court added in that instance. The Court ruled,<sup>49</sup> "We also make it clear that until further orders, the 15 members of the Assembly ought not to be compelled to participate in the proceedings of the ongoing session of the House and an option should be given to them if they can take part in the said proceedings or opt to remain out of the same"<sup>50</sup>

## **MADHYA PRADESH POLITICAL CRISES, 2020**

As a 'letter war' raged between the two constitutional officers amid political unrest in the state, Madhya Pradesh governor Lalji Tandon issued a fresh instruction to the state's beleaguered chief minister Kamal Nath ordering him to hold a floor test in the legislature. Following their meeting at Raj Bhavan, CM Kamal Nath asserted that his government has a majority and that a floor vote in the legislature is unnecessary. In addition, Nath dared the opposition BJP to

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<sup>45</sup> *Shivraj Singh Chouhan* (n 12)

<sup>46</sup> *Pratap Gouda Patil & Ors v the State of Karnataka & Ors* Writ Petition (Civil) No 872 of 2019

<sup>47</sup> *Ibid*

<sup>48</sup> *Ibid*

<sup>49</sup> *Sohini Chowdhury* (n 44)

<sup>50</sup> *Ibid*

introduce a resolution of no confidence against his 15-month-old Congress government if they wished to assess its viability in the House. Nath reasoned that since Congress is in a majority, there is no need for a floor test.

### *Dealing with the floor test*

Governor of Madhya Pradesh Lalji Tandon requested that Kamal Nath take the floor exam. According to the governor, if a floor test is not held,<sup>51</sup> the chief minister will not have a majority in the house. Following the start of the Assembly's budget session, Tandon issued a new directive two days after initially requesting that Nath take a floor test.

### *BJP petitions the Supreme Court*

The BJP petitioned the Supreme Court for a floor test in the Madhya Pradesh assembly after the adjournment. Shivraj Singh Chouhan, a former chief minister of Madhya Pradesh, and nine other BJP legislators petitioned the SC for a directive for the assembly speaker to arrange a floor test within 12 hours. A coronavirus scare forced the MP House to adjourn. Due to the state government's concerns regarding the coronavirus, the Madhya Pradesh Assembly was suspended until March 26, 2020, despite the BJP's call for a floor test to be held.

Following the beginning of the Budget session, the governor started his customary speech to the House, which only lasted two minutes because he didn't read the complete text, and he then left with speaker NP Prajapati. Govind Singh, the minister for legislative affairs, brought up the danger posed by the coronavirus to the nation and also noted a piece of advice released by the Central government. The Rajya Sabha elections were set to take place on March 26, therefore the speaker agreed to Singh's request and postponed the proceedings till then.

It was discovered that the 22 Congress MLAs who had resigned were not traveling from Bengaluru, where they are camped, to Bhopal. A political crisis in the state was brought on by their mutiny against Congress.

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<sup>51</sup> Apurva Vishwanath (n 7)

These MLAs, which included six ministers, stated that there was no use in returning at this time because they had already resigned from their positions in the assembly. Six of the 22 MLAs had tendered their resignations, according to Speaker NP Prajapati. However, he remained ambivalent about doing a floor test.<sup>52</sup> Interestingly, the List of Business (LoB) published by the state Assembly secretariat made no mention of the holding of a floor test. Only the motion of thanks and the governor's traditional speech on the first day of the budget session were mentioned in the LoB.<sup>53</sup>

### *Playing with numbers*

After six resignations and the deaths of two MLAs, the assembly had 222 members, making 112 the majority. If the 16 further resignations following Scindia's departure from Congress were accepted, the House would have 206 members, making 104 the majority if there were 92 members left. With Congress abstaining from the trust vote, Shivraj Singh Chouhan, the chief minister of Madhya Pradesh, finally demonstrated his majority on the legislative assembly floor. All 107 of the BJP's MLAs supported Mr. Chouhan. Voting in favour of the BJP-led administration was two BSP, two independents, and the lone SP MLA who had previously supported the Kamal Nath administration.

## **MAHARASHTRA CRISES, 2022**

### *Structure of the Government*

The majority threshold in the Maharashtra Legislative Assembly is 143, with a total of 285 seats (down from 288 after the arrest of two MLAs and the death of another). The BJP holds 106 seats in the assembly, compared to the 150 seats held by the MVA coalition. However, around 40 Shiv Sena MLAs have stated that they oppose lowering the MVA numbers below a majority amid

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<sup>52</sup> Times of India, 'Madhya Pradesh political crisis: Key points' (*Times of India*, 2020) <<https://timesofindia.indiatimes.com/india/madhya-pradesh-political-crisis-key-points/articleshow/74647325.cms>> accessed 13 August 2022

<sup>53</sup> *Ibid*

the Maharashtra crisis.<sup>54</sup> The Maharashtra administration was likely to tumble if these unhappy MLAs opposed the MVA coalition in the Assembly during the floor test.<sup>55</sup>

### *Governor's Direction for Floor Test*

Downtrodden as soon as Governor Bhagat Singh Koshyari ordered the Maha Vikas Aghadi (MVA) administration to take a floor test in the Assembly on Thursday 30<sup>th</sup> June 2022, Maharashtra Chief Minister Uddhav Thackeray announced his resignation from the position on Wednesday i.e., 29<sup>th</sup> June 2022. Mr. Thackeray presented Mr. Koshyari with his resignation at the Raj Bhavan in Mumbai late in the evening. By the time the other arrangements are established, the Governor accepted Mr. Thackeray's resignation in exchange for acting as the Chief Minister.

### *Supreme Court suffers a setback*

Earlier, the Supreme Court declined to delay the floor test requested by Mr. Koshyari on June 30 to examine the Maha Vikas Aghadi government's assertion of majority in the assembly, dealing a blow to the Uddhav Thackeray party. Following a protracted hearing that lasted four hours, Justices Surya Kant and J.B. Pardiwala of the Vacation Bench quickly notified the warring Shiv Sena factions that they were not staying the floor test.

The court announced that it would also hear the writ petitions filed by Sena dissidents led by Eknath Shinde who have questioned the disqualification proceedings started against them. Sunil Prabhu, a Thackeray supporter, had challenged the procedure leading to the call for the floor test in his writ petition. The Bench addressed the lawyers, saying, "Tomorrow's proceedings (floor test) will be subject to the outcome of these petitions in court." Amid the political turbulence in Maharashtra, the court held an urgent hearing on the challenge to the

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<sup>54</sup> Rupam Shukla, 'Explained: What is a floor test? In cases where a majority in the House is questioned, the leader of the House needs to prove the majority by undergoing a trust vote' (*Deccan Herald*, 2022) <<https://www.deccanherald.com/national/explained-what-is-a-floor-test-1122379.html>> accessed 14 August 2022

<sup>55</sup> *Ibid*

floor test. Justice Kant submitted, "The urgency that has been created requires us to hear the matter today itself."

The Governor and the opposition MLAs claimed that postponing the confidence vote would be the "antithesis of democracy" and "give more time for horse-trading in Maharashtra", which led to the decision to allow the floor test.<sup>56</sup> The Thackeray camp maintained that the trust vote could not go forward while the Supreme Court was still reviewing the disqualification procedures against 16 rebel Sena MLAs, including Mr. Shinde. They referred to the opposition as an "artificial majority."<sup>57</sup>

### *Order of the Governor*

Mr. Koshyari gave Mr. Thackeray the task of proving the government's majority on the day of the floor test. In his letter, Mr. Koshyari exercised his authority under Articles 174<sup>58</sup> and 175(2)<sup>59</sup> to order the Secretary of the Legislative Assembly to call a special one-day session, stating, "The floor test required for proving the majority of the Chief Minister is imperative to ensure that the government continues to function with the confidence of the house." Adding to the news stories in print and electronic media about 39 MLAs quitting the MVA government, Mr. Koshyari wrote in his letter that the Raj Bhavan had also received an email from seven Independent MLAs on June 28 that claimed the Chief Minister had lost the support of the majority on the house floor.

Shiv Sena, which was dealing with a rebellion by the party's second-in-command, Eknath Shinde, and 38 other MLAs against Chief Minister, Uddhav Thackeray, petitioned the Supreme Court for a stay on the Governor's order to call a session while the disqualification process against 16 rebel MLAs was ongoing. The 16 MLAs received notices from Deputy Speaker, Narhari Zirwal, which they challenged in court. The deadline for them to file their response was extended by the court to July 12 at an urgent hearing. Shiv Sena's Lok Sabha MP, Arvind Sawant

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<sup>56</sup> Special Correspondent, 'Uddhav Thackeray resigns as Supreme Court refuses to stay floor test' (*The Hindu*, 2022) <<https://www.thehindu.com/news/national/maharashtra-political-crisis-uddhav-thackeray-resigns-after-supreme-court-denies-stay-on-floor-test/article65583238.ece>> accessed 13 August 2022

<sup>57</sup> *Ibid*

<sup>58</sup> Constitution of India, art 174

<sup>59</sup> Constitution of India, art 175(2)

questioned the hurry with which Mr. Koshyari issued the directives, questioning how the governor could require the government to demonstrate its majority when disqualification proceedings were ongoing.

## **USING THE PROVISION TO TOPPLE THE DEMOCRATICALLY ELECTED GOVERNMENT**

To combat opportunistic politics and avoid "Aaya Rams and Gaya Rams," the Constitution's Tenth Schedule was created. It stipulates that members of Parliament and legislative assemblies are ineligible to serve if they voluntarily renounce their membership in the political party to which they are affiliated or abstain from voting following the party's call during debates in either house of Congress. Initially, the disqualification principle did not apply when one-third of the elected officials of a political party switched to the party represented by a different political party. This caused widespread defections, which undermined elected administrations.

The one-third provision was later removed once the Tenth Schedule was changed. Now, unless a political party merges with another political party with the support of two-thirds of its members, the Tenth Schedule will not be applicable. Except in minor states where the strength of the legislative assemblies permits such mergers, the two-thirds rule is impossible to bypass. Members of legislative assemblies are now taking an alternative path to overthrow elected governments to circumvent the Tenth Schedule's<sup>60</sup> applicability. Any legislator has the right to resign from the House under Article 190(3)(b)<sup>61</sup> of the Constitution. Of course, the Speaker has the authority to declare that a particular resignation was neither voluntary nor sincere. Such resignation may be rejected by the Speaker after inquiry.<sup>62</sup>

In the recent past, the BJP has used this clause to overthrow democratically elected governments. The techniques are original. It uses unusual methods. A private chartered plane is used to transport the ruling party's dissidents to a state where the party is in power. The plane is either paid for by the BJP or the dissidents' sympathizers. Legislators who disagree with the

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<sup>60</sup> Constitution of India, schedule X

<sup>61</sup> Constitution of India, art 190(3)(b)

<sup>62</sup> Special Correspondent (n 57)

government are isolated at resorts to enjoy the perks of a five-star lifestyle. We assume that unless they had received rewards in kind, cash, or both, no such dissident would risk losing their membership. If there are terms of any payments, they are established beforehand. These dissidents submit their resignations to the Speaker of the assembly they are members of while cozying up to the police force in the state where the BJP is in control and being shielded by it. They are prevented from communicating and denied access to their mobile phones in the interim. Dissident legislators are not accessible to those in authority in the state, despite their repeated requests. The legislators who are being held hostage can be consenting "captives" for clear trade-offs.<sup>63</sup>

## CONCLUSION

According to my point of view, it is one's own decision to choose whosoever he/she wants to support and whichever government they take up. It has to be purely based on their terms and opinions. Politics is a mind game and those who are into this take decisions keeping in mind their greed and wants which is fair enough on their part because that is how politics work. The term Floor Test, may not be mentioned specifically in the Constitution, which also sometimes becomes a major point to be raised by the people against it and end up calling it to be a step that is constitutionally unfair, immoral, and unjust but this comes under one of the powers of the Governor and is also at times accessed by the Supreme Court to keep a check on the Government if it is still believed or questioned by its members. If the members of a Government lose trust in their leader then how will they ensure a powerful government?

Democracy is being used here trying to give it fair play. The political system has been infected by yet another pathogen which is something that cannot be cured by any means. Representatives of the people who adhere to democratic traditions, uphold constitutional values, and believe in the rule of law can only offer the antidote. The contrary, however, is true. The police, state governments, political parties, other constitutional institutions, governors, and these entities are facilitators and hubs of intrigue in the destruction of democracy. Constitutional anarchy is what

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<sup>63</sup> *Ibid*



we are currently experiencing. However, the courts support such conduct while appallingly observing. The floor test is now a joke.