



KAMARAJ IAS ACADEMY
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Issue of indecision by the Governor on passed Bills

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Why in News:

The Tamil Nadu Governor was again in the news recently when the Tamil Nadu Assembly passed a resolution urging the President of India, among other things, to fix a timeline for assent to be given to Bills passed by the Assembly. The immediate provocation for the resolution was the Governor's public statement where he implied that if the Bill passed by the legislature transgresses constitutional limits, then it is the Governor's responsibility not to give assent. Several Bills passed by the Assembly have been pending as the Governor has not made any decision.

Governor's power over Bill

Under Article 200, the Governor may (a) grant assent (b) withhold assent (c) return for reconsideration by the Legislature or (b) reserve for the consideration of the President any Bill passed by the State legislature and presented to him for assent.

Under Article 200 of the Constitution the first proviso enables the Governor to return a Bill, that is not a Money Bill, with a message requesting the House, or Houses, if there is an upper chamber, to reconsider the Bill, or any provisions, and also consider introducing amendments he may recommend.

The House will have to reconsider as suggested. If the Bill is passed again, with or without changes, and presented for assent, "the Governor shall not withhold assent therefrom".

There is no timeframe fixed in the Constitution for any of these functions.

The Constitution makes it mandatory that the Governor should reserve for the President's consideration if, in his opinion (a phrase that means he exercises his own discretion in this), a Bill that "so derogates from the powers of the High Court as to endanger the position which that Court is by this Constitution designed to fill".

In other words, any Bill that seems to clip the wings of the High Court or undermine its functioning will not become law without the President's assent.

Once again, there is no timeframe. Article 201 says when a Bill is reserved by a Governor for his consideration, "the President shall declare either that he assents to the Bill, or that he withholds assent therefrom".

He may also direct the Governor to return the Bill, if it is not a Money Bill, to the Legislature along with a message. The House or Houses will have to reconsider the Bill within a period of six months from receiving it. It may pass the Bill again with or without any change.

The Bill shall again be presented to the President for his consideration. The article ends with that. This means that the Bill will become law if the assent is given, but nothing can be done if the Bill is denied assent by the President or if he makes no decision.

Does the Governor have any discretion in this regard?

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Section 75 of the Government of India Act, 1935, contained the words ‘in his discretion’ while referring to the Governor’s grant of assent to Bills. The phrase was consciously omitted when Article 175 in the draft Constitution (later renumbered as the present Article 200) was enacted. Commentators generally agree that the Governor, who normally functions on the aid and advice of the Council of Ministers, is bound to go by the advice in the matter of granting assent.

It may seem unusual to say the Governor should act on ministerial advice even when withholding assent and returning a Bill for reconsideration. However, a reading of the Constituent Assembly debates shows that this was indeed what the framers of the Constitution intended.

It was explained on behalf of the drafting committee that there may be a situation when the Council of Ministers feels that a Bill has been hastily adopted or that it requires changes.

In such a situation, the Constitution must provide for the possibility that the Council may want to recall its Bill, and accordingly advise the Governor to return it.

While analysing the provision, the Sarkaria Commission on Union-State Relations points out that the Constitutional Adviser’s note said there could be occasions for even withholding assent on the advice of the Ministers

For instance, if after a Bill is passed the Ministers resign before the Bill gets the Governor’s assent, the new Ministry may not want to go ahead with the Bill and might advise against assent being given. These examples suggest that no discretion was ever envisaged for the Governor in dealing with Bills.

In the United Kingdom

As regards the option of withholding assent, a plain reading of Article 200 suggests that, theoretically, the Governor can do so. But the question is whether the Governor should withhold assent to a Bill passed by the legislature.

To answer this question, we may usefully turn our attention to the practice followed in the United Kingdom, whose model of government was adopted by our Constitution. D.D. Basu, in his commentaries on the Constitution, says: “the position of the Governor in this respect is that of the sovereign in England.

In theory the sovereign can refuse to give his assent but this right has not been exercised since the reign of Queen Anne. The veto could now only be exercised on ministerial advice and no government would veto Bills for which it was responsible. Refusal of royal assent on the ground that the monarch strongly disapproved of a Bill or that it was intensely controversial would be unconstitutional.”

So, the question of crucial importance is whether under Article 200, the Governor can withhold his assent to a Bill in exercise of his discretionary powers. Or, whether he can do so only on the advice of the Council of Ministers.

Under Article 154 of the Constitution, the Governor can exercise his executive powers only on the advice of the Council of Ministers. So, there is a view that the Governor can withhold assent to a Bill only on ministerial advice.

But some experts ask as to why the Council of Ministers should advise the Governor to withhold assent after the Bill has been passed by the Assembly. If the government did not want to proceed with the Bill, it could withdraw it at any stage of consideration by the Assembly.

Similarly, if the government wanted to repeal it after it becomes an Act, it could have it repealed by the House.

Of course, the government can advise the Governor to withhold assent if it has second thoughts on the Bill after it has been passed — this seems to be the position in the U.K. where the sovereign refuses assent only on ministerial advice.

However, it seems that under the Indian Constitution, the exercise of the power vested in the Governor to withhold assent may not be confined to one situation, namely, where the Council of Ministers advise the Governor to do so.

But the larger question is why a Governor should be allowed to withhold assent when the Bill is passed by the Assembly. A Bill is brought before the Assembly when there is some urgency about a legislation. It may be a part of the policy of the elected government which is responsible to the people.

Withholding assent means the death of that Bill. Thus, the Governor can with one stroke of the pen completely negate the will of the legislature, and thereby negate the will of the people.

The Constitution cannot be assumed to be permitting the Governor to do that. Only the judiciary can set it right by way of a clear enunciation of the law.

The Way Ahead

The framers of the Constitution would never have imagined that Governors would sit on Bills indefinitely without exercising any of the options given in Article 200. This is a new development which needs new solutions within the framework of the Constitution. So, it falls to the Supreme Court to fix a reasonable time frame for Governors to take a decision on a Bill passed by the Assembly in the larger interest of federalism in the country