CONSTITUTIONAL POWERS OF THE GOVERNOR IN RESERVATION OF A BILL: A COMPARATIVE ANALYSIS

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ABSTRACT

The article analyses the Powers of the Governor in reserving a Bill and a comparative analysis of powers of Governor's in different Countries. This article examines the evolution and contemporary implications of executive discretion in the legislative processes of India, Ireland, the United States, Canada, and the United Kingdom. By analysing historical debates, constitutional provisions, and recent political developments, the paper highlights how each country navigates the balance between executive authority and legislative sovereignty. In India, the Constituent Assembly debates of 1949 revealed a deliberate move to limit the Governor's discretionary powers, particularly concerning the assent to bills. Dr. B.R. Ambedkar emphasized that the Governor must act on the advice of the Council of Ministers, reflecting a commitment to parliamentary democracy. This intent was further reinforced by judicial interpretations, affirming that the Governor's discretion is constitutionally constrained. Ireland's 1937 debates on presidential powers under the Constitution underscored a preference for a ceremonial head of state with limited executive discretion. However, provisions like Article 26, allowing the President to refer bills to the Supreme Court for constitutional review, introduced a nuanced check on legislative actions. Notably, the President's power to refuse dissolution of the Dáil, as exercised in 1982, illustrated the potential for executive intervention in parliamentary procedures. In the United States, the Constitution grants the President significant legislative powers, including the veto. Historical instances, such as President Andrew Jackson's veto of the Maysville Road Bill in 1830, demonstrate the use of executive discretion to influence legislative outcomes. The War Powers Resolution of 1973 further exemplifies legislative attempts to curb executive overreach, aiming to reassert congressional authority over military engagements. Canada's disallowance and reservation powers, vestiges of colonial governance, have been subjects of debate regarding their relevance in modern federalism.

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While seldom invoked, these powers have occasionally been exercised, as in the case of Saskatchewan's mining legislation in the 1960s. Contemporary discussions focus on the necessity of these powers in a mature democracy and their alignment with principles of self-governance. The United Kingdom's constitutional framework, characterized by parliamentary sovereignty, traditionally limits executive discretion in legislative matters. The royal assent process, though a formality, symbolizes the constitutional monarchy's role in the legislative process. Debates surrounding the royal prerogative powers, including the prerogative of mercy and the dissolution of Parliament, reflect ongoing discussions about the balance between tradition and democratic accountability. The Article underscores the importance of maintaining a dynamic equilibrium between executive and legislative powers to uphold democratic principles and ensure responsive governance.

Introduction

The powers of the Governor is one of the less debated provisions in the Constitution. Governor has powers akin to that of the President of India. It is mentioned under Article 200 of the Indian Constitution, which states that t*he Governor may grant or withhold assent to a bill, return it for reconsideration (if not a Money Bill), or reserve it for the President's consideration*.[3] The provision mentions that:

> *"When a Bill has been passed by the Legislative Assembly of a State or, in the case of a State having a Legislative Council, has been passed by both Houses of the Legislature of the State, it shall be presented to the Governor and the Governor shall declare either that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President:*
>
> *Provided that the Governor may, as soon as possible after the presentation to him of the Bill for assent, return the Bill if it is not a Money Bill together with a message requesting that the House or Houses will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message and, when a Bill is so returned, the House or Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the House or Houses with or without amendment and presented to the Governor for*

[3] Assent to Bills, Constitution of India 1950

> *assent, the Governor shall not withhold assent therefrom:*
>
> *Provided further that the Governor shall not assent to, but shall reserve for the consideration of the President, any Bill which in the opinion of the Governor would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by this Constitution designed to fill."*[4]

Once reserved, Article 201 governs the President's decision, potentially involving assent, withholding, or returning the bill to the legislature with recommendations. It mentions that

> *"When a Bill is reserved by a Governor for the consideration of the President, the President shall declare either that he assents to the Bill or that he withholds assent therefrom:*
>
> *Provided that, where the Bill is not a Money Bill, the President may direct the Governor to return the Bill to the House or, as the case may be, the Houses of the Legislature of the State together with such a message as it mentioned in the first proviso to article 200 and, when a Bill is so returned, the House or Houses shall reconsider it accordingly within a period of six months from the date of receipt of such message and, if it is again passed by the House or Houses with or without amendment, it shall be presented again to the President for his consideration."*[5]

In a recent case, the *Supreme Court*[6] held that the Indian judiciary acts as a powerful constitutional check. The Governor must assent, withhold, or reserve a bill for the President's consideration. If withholding (and the bill isn't a Money Bill), the Governor must "return as soon as possible" with a message requesting reconsideration. If re-passed (with/without amendments), the Governor must assent. The Supreme Court emphasized urgency, rejecting any notion of indefinite waiting ("pocket veto"). Reservation can only occur at the first instance, and a repassed bill obligates the Governor to assent, unless material changes were made. Once reserved, the President may assent or withhold assent. If withholding (for

[4] Part VI, Assent to Bills, Constitution of India, https://www.constitutionofindia.net/articles/article-200-assent-to-bills/

[5] Sucheta, "*When can Governor & President's exercise of powers under Arts. 200 and 201 respectively, come under Judicial Review?*" , SCC Online, https://www.scconline.com/blog/post/2025/04/14/governor-president-power-under-arts-200-201-assent-of-bills-under-judicial-review-sc-legal-news/, Last seen 01 Sept 2025, 18:15pm

[6] State of Tamil Nadu v Governor of Tamil Nadu, 2025 SCC OnLine SC 770

non-Money Bills), the President can direct reconsideration within six months, after which re-passage requires the President to revisit for decision. Justice J.B. Pardiwala and Justice R. Mahadevan mentioend that reservation by the Governor is per se illegal, and was unable to find any bona fide reason behind the reservation.

> *"The Constitution is our bedrock ensuring our safety and security. It outlines a process that keeps us rooted in values. We read it for reference and for every policy decision. Without it, we would be lost and make many mistakes. It is now seventy-five years old, but we still keep turning to it, why? Because it guarantees our rights and sets benchmarks for our responsibilities. The laws and rules that uplift all people sprout from its pristine womb, welfare of all is its primary concern, but its sanctity and safety should be our prime concern"*[7]

When the issue of Judicial Review and Justiciability came in, the Court also clarified that both are not synonymous. It has also mentioned that grounds under which they can reserve:

- *Where the reservation is on the ground that the passing of the Bill endangers the position or power of the High Court;*

- *When the reservation is on the grounds of perils to Democracy or democratic principles or on other exceptional grounds;*

- *Personal dissatisfaction of the governor;*

When the Governor seeks a reservation of the Bill, he/she is expected to mention clear reasons for the Court to approve or disapprove the reservation. Otherwise, the State Government can seek a Writ of Mandamus from a Competent Court against the Governor seeking an expeditious direction.

CANADA

The Law in Canada mentions the powers under Sections 55–57 and Section 90 of the Constitution Act, 1867, the Governor General (federally) and Lieutenant Governors

[7] ibid

(provincially) could reserve bills for federal or monarch's consideration, and the federal government could disallow provincial laws. Canada inherited these mechanisms from British colonial governance. Section 55 mentions that the Reservation by *Governor General:*

> *Originally permitted the Governor General to reserve federal bills for the British government's consideration; assent then lay with the monarch on ministerial advice. Over time, constitutional conventions nullified its practical effect; it's now obsolete despite still existing textually.*

While Section 56 mentions Disallowance, which states that: "*After assent, the British government could disallow federal laws within a year; extended to provinces"* via Section 90 that states that "T*hese powers were increasingly seen as political intrusions and fell out of use by early 20th century; the federal courts became the primary mechanism for interjurisdictional disputes".*

These powers have fallen into disuse e.g., the last reservation was in Saskatchewan in 1961, and the last disallowance at federal level occurred around the 1940s. Initially actively used, especially in the 19th century, these powers have largely fallen into disuse. By mid-20th century, reservations became rare, with only one noted instance in 1961 in Saskatchewan. Conventional practice now obliges assent to legislature-approved bills. These are discretionary powers not explicitly codified in the Constitution but derived from convention—unwritten traditions guiding constitutional monarchies.

AUSTRALIA

Australia's constitution allows the Governor-General to act at discretion in rare scenarios—such as dismissing a Prime Minister, refusing assent, or dissolving/double-dissolving Parliament. These actions are not governed by detailed rules but by constitutional convention. Chapter II of the Constitution vests executive power in the Crown, exercisable by the Governor-General, typically on advice of the Federal Executive Council. Though not codified, accepted discretionary powers include:

- Appointment of PM when no majority,
- Dismissal of PM who loses confidence,

- Refusing dissolution or double dissolution,

- Refusing royal assent in rare cases

Canada derives this power through two Doctrines:- *The Doctrine of Necessity* and *The Deterrent Function.* The Doctrine of Necessity grants the Governor-General authority to act to preserve the constitutional order when normal channels fail—even outside formal statute.While rare in Australian practice, its doctrine exists in theory. The Deterrent Function, as outlined in critiques of proposals to abolish reserve powers, is that their very presence deters unconstitutional behaviour by the executive, alerting them that an independent arbiter can intervene where courts may lack authority, speed, or standing.

A landmark use occurred when Governor-General Sir John Kerr dismissed the Whitlam government, demonstrating how reserve powers can be wielded dramatically—even controversially—in exceptional circumstances.[8] In October 1975, Opposition Leader Malcolm Fraser directed the Senate to block passage of Budget (supply) bills—a bold attempt to force the government into an early election. This created a constitutional impasse with potential to disrupt government functions.

Prime Minister Gough Whitlam, despite retaining majority support in the House, refused to call a full election and sought an alternative by requesting a half-Senate election. On 11 November 1975, Governor-General Sir John Kerr exercised his reserve powers—these are rarely used discretionary powers not bound by ministerial advice—to dismiss Whitlam from office. He immediately appointed Fraser as caretaker Prime Minister, contingent on securing supply and calling a double dissolution election. Section 64 grants the Governor-General power to appoint and dismiss a Prime Minister. Reserve powers like this are normatively constrained by convention—governors-general typically follow advice, unless exceptional circumstances arise. Kerr's move relied on these unwritten conventions, colliding head-on with democratic expectations. The dismissal sparked massive protests and political controversy, with the dismissal described as dramatically undermining democratic norms. Whitlam famously remarked: "*Ladies and gentlemen, well may we say 'God save the Queen,' because nothing will save the Governor-General.*" Kerr had sought and received legal advice from Chief Justice Sir Garfield Barwick. However, critics argued that Barwick's advice came after Kerr had already

[8] 1975 Constitutional Crisis

decided to act. Other key legal counsel, like Australia's Solicitor-General Sir Maurice Byers, advised that refusal of supply did not compel the Governor-General to intervene—a constitutional "trigger" was absent. Kerr's move was thus seen by many scholars and commentators as a premeditated ambush, with poor regard for legal norms. The 1975 Australian crisis strikingly illustrates the perils of powerful reserve powers rooted in unwritten convention. Unlike India, where structured constitutional articles and judicial review act as guardrails, Australia's model revealed how convention alone may fail to uphold democratic substance.

- India's system benefits from codified limits (e.g., Articles 200 and 161) and proactive judicial enforcement (e.g., the 2025 Tamil Nadu case—and even using Article 142 to enforce timely assent).

- Canada shows another trajectory—constitutional text can fade into irrelevance when replaced by robust conventions and judicial mechanisms.

- Australia in 1975 serves as a cautionary tale: absence of codified boundaries may trigger constitutional crises with deep political and democratic consequences.

Canada's reservation/disallowance tools are largely vestigial today—phasing out in favor of constitutional conventions and court judgments that reinforce provincial autonomy. Australia uniquely preserves potent reserve powers—less codified, but deeply entrenched through convention, as evidenced by high-tension political moments like 1975.

IRELAND

Article 13 of Ireland's Constitution outlines the President's powers, many of which are exercisable only on the advice of the government, except for those where the Constitution explicitly permits absolute discretion (e.g., refusing dissolution when a Taoiseach has lost majority support). Legislative assent occurs under Article 25, with bills requiring presidential signature between the 5th and 7th day after presentation. The President does not have a veto; refusal would trigger the Presidential Commission stepping in, and might lead to impeachment. A key discretionary tool: the Article 26 referral, where the President may refer bills to the Supreme Court to test constitutionality. Once the Court upholds a bill, its constitutionality

cannot be challenged later. Another rarely-noted power under *Article 27*: if a majority of the Seanad and one-third of the Dáil petition, the President may refer a bill to the people via referendum. This has never been used. Ireland's system reflects a ceremonial presidency rooted in constitutional decorum—reserve powers are minuscule, tightly regulated, and hardly ever exercised, despite being structurally possible.

UNITED STATES

In the United States, the Constitution grants the President significant legislative powers, including the veto. Historical instances, such as President Andrew Jackson's veto of the Maysville Road Bill in 1830, demonstrate the use of executive discretion to influence legislative outcomes. The War Powers Resolution of 1973 further exemplifies legislative attempts to curb executive overreach, aiming to reassert congressional authority over military engagements. In *Clinton v. City of New York (1998),*[9] the Supreme Court struck down the line-item veto as unconstitutional—courts concluded that the President cannot unilaterally amend or repeal parts of duly enacted statutes, emphasising strict adherence to the *Presentment Clause. In INS v. Chadha (1983)*,[10] the Court held that Congress cannot grant itself a one-house legislative veto over administrative actions, as it violates bicameralism and the Presentment Clause. Executive proposals to revive impoundment—the President's withholding of appropriated funds—have sparked fierce debate. Past legal decisions, notably *Train v. City of New York (1975)*[11] and the **Impoundment Control Act of 1974**, reaffirmed that once Congress appropriates funds, the executive must implement them. Recent attempts to stretch impoundment powers have been criticised as dangerous encroachments on legislative authority.

UNITED KINGDOM

In the House of Commons (2005), MPs discussed the dormant status of the federal disallowance and reservation powers—impugning their obsolescence and calling on Parliament to formally remove them from constitutional text as they no longer fit in mature federalism. Debates focused on establishing a statutory disallowance procedure for delegated legislation like regulatory instruments. MPs highlighted that while over 80% of law is made

[9] 524 U.S. 417 (1998)
[10] 462 U.S. 919 (1983)
[11] 420 U.S. 136 (1975)

via regulation, disallowance powers (currently grounded merely in Standing Orders) are limited and need statutory backing for effective oversight. The last instance of royal veto in the UK was in 1708, when Queen Anne withheld assent for the *Scottish Militia Bill*[12], noting a rare exertion of monarchical discretion. Modern parliamentary debate (1967) acknowledged the power's theoretical existence, but cautioned—via references to *Erskine May*[13]—that royal refusal should only arise in extreme *"chicanery"* or crisis. The Parliament Acts of 1911 and 1949 were debated in the Commons and Lords, leading to limitations on the House of Lords' delaying powers. Critics initially challenged these moves, claiming the Commons had overstepped—but the Lords ultimately upheld the validity of Acts passed under this mechanism. Parliamentary procedure requires the King's (or Queen's) Consent for bills affecting the Crown or its assets—an established convention. Memos revealed that this consent process can influence legislative drafting even before introduction, though the monarchy reportedly never refuses consent. Legislative debates around the Sewel Convention[14] requiring UK legislation affecting devolved matters to seek consent from devolved legislatures have sparked contention. Although legally unenforceable, breaches provoke strong constitutional concern, as seen during debates over Brexit-related bills. Public forums illustrate that many Britons view the monarch's reserve powers—though mostly ceremonial—as a last-resort "*constitutional backstop,"* to be used only in dire, exceptional circumstances.

Other federations like Germany, Argentina, and South Africa either rely on integrated courtroom hierarchies or specialised constitutional courts. In India and similar common-law federations, judicial review is dispersed across courts but culminates at the apex—ensuring constitutional supremacy. India strikes a delicate balance: the Governor has discretionary power, but judicial scrutiny ensures it isn't abused, particularly concerning legislative delays through reservation. The Supreme Court's landmark judgment in *State of Tamil Nadu v. Governor of Tamil Nadu (2025)*[15] reaffirmed that:

The Governor does not have unfettered discretion (no "pocket veto")—the phrase "in his discretion" was deliberately omitted from Article 200 to curtail such power. Acts of

[12] The Scottish Militia Bill 1708
[13] Thomas Erskine May, Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament. London :Butterworth, 1971
[14] https://www.centreonconstitutionalchange.ac.uk/the-basics/what-sewel-convention
[15] 2025 INSC 481, Reportable in the Supreme Court

withholding or reserving bills after re-presentation violate constitutional norms.

The Court, under its Article 142 powers, "deemed" ten Tamil Nadu bills to have become law on re-presentation dates and imposed for the future which are (a) A 1-month timeline for Governor's action post-presentation and (b) A 3-month deadline if action runs contrary to ministerial advice (e.g., withholding or reservation). Also Judicial Praise:- *Commentators lauded the judgment for reinforcing democratic norms, preventing arbitrary delays, and promoting timely governance*. In *Perarivalan Clemency*[16] the court stated that - *"Under Article 161, the Governor failed to act on cabinet advice to commute a death sentence recommendation*." The Supreme Court criticized the delay, underscoring the Governor must follow council advice, and used Article 142 to order release. During the drafting of the Constitution, Dr. B. R. Ambedkar clarified that the Governor's discretionary powers were meant to be *very limited* and not contradictory to responsible government. The deletion of the term "in his discretion" from draft provisions underscored this intent. Expressing caution, he stressed the Governor's powers must align with Ministry advice. Delegate Biswanath Das of Orissa expressed concern over elevating the Governor to a figurehead capable of withholding executive authority, potentially misaligned with elected governments. Earlier, during debates on the Government of India Act, 1935, members across legislative bodies cautioned against granting a Governor-General unchecked powers—warning of dangerous precedents that might sideline legislative authority. At the constituent level, concerns centred around preserving parliamentary sovereignty and preventing executive overreach. In recent state legislative sessions, especially Telangana's, debates have centred on the Governor's assent delaying bills on reservation quotas.[17] BRS leader KTR questioned why reforms remained pending assent after assembly passage, raising concerns over executive obstinacy. Opposition groups and political alliances (like the INDIA bloc) have decried delays in granting assent as obstructing justice—calling for swift presidential and gubernatorial action. Provinces like Tamil Nadu and Kerala have escalated such delays to judicial interventions, where the Supreme Court critically queried whether Governors could indefinitely stall legislation, essentially undermining democratic will. In early *Dáil Éireann* debates regarding the 1937 Constitution, Professor

[16] Bhadra Sinha, "*Why Supreme Court ordered release of Rajiv Assassination Convict AG Perarivalan"*, The Print, https://theprint.in/india/why-supreme-court-ordered-release-of-rajiv-assassination-convict-a-g-perarivalan/961442/, last seen 01 Sept 2025, 18:20 pm

[17] Raj Rayasam, "*KTR calls out Centre, Telangana Governor after TN Resolution seeking timeframe for Bill approval*", The South First, https://thesouthfirst.com/telangana/ktr-calls-out-centre-telangana-governor-after-tn-resolution-seeking-timeframe-for-bill-approval/, last seen 24 August 2025, 18:28pm

O'Sullivan warned that residuary powers—those not explicitly restricted—could grant the President excessive authority, potentially undermining civil liberties. Mr. O'Donoghue emphasised that the Presidency was envisioned as symbolic rather than a constitutional enforcer. While the office held ceremonial precedence, legislative control remained paramount. The Second Amendment refined Article 26, which allowed Presidential referrals to the Supreme Court on constitutionality. It mandated a single, unanimous opinion—enhancing legal certainty and preventing future re-litigation of upheld bills. The Supreme Court (2025) reiterated that the Governor *"does not possess any discretion"* under Article 200 and must comply with the Council of Ministers 'advice, except in rare instances defined by the Constitution (e.g., matters affecting High Court powers).

CONCLUSION

In conclusion, the powers of governors as defined in the Constitution play a crucial role in maintaining the balance of power within a state or region. Governors act as the constitutional heads, exercising executive, legislative, and sometimes judicial powers to ensure governance runs smoothly. Their authority is designed to uphold the rule of law, safeguard democratic processes, and facilitate cooperation between the state and central governments. While their powers are significant, they are also clearly delineated to prevent misuse and ensure accountability. Overall, the constitutional framework empowers governors to be pivotal agents in the political and administrative structure of the state.