THE INDIAN GOVERNOR: CONSTITUTIONAL SENTINEL OR CEREMONIAL FIGUREHEAD?

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ABSTRACT

The recent judgment of the Supreme Court in *The State of Tamil Nadu v. The Governor of Tamil Nadu* has settled various questions pertaining to the extent of gubernatorial discretion. The cause of action of the aggrieved petitioners lay in the absence of an explicit timeline in Article 200, which enabled the Governor to keep several Bills passed by the legislature in indefinite limbo, which in formal terms constitutes a 'pocket veto'. The Court declared that the Constitution has no scope for a pocket veto, and any inaction by the Governor exceeding the judicially prescribed timelines is justiciable. The lack of an explicit timeline or indeed, explicit procedural mandates in the Constitution is not an omission on the part of the framers, but rather a deliberate safety valve in exigencies. The question arises what the new role of the Governor is post *State of Tamil Nadu*. The paper analyzes whether the Governor can still function as a '*friend, philosopher and guide*' to his Council of Ministers or if his role is completely bound by the aid and advice of his Council. This research employs an analysis of the constitutional framework chiefly surrounding the temporal facets of Article 200, superimposing the same with the powers vested in the President of India, analyzing subsequent judicial interpretations and drawing relevant comparisons to foreign jurisdictions.

Keywords: Gubernatorial discretion, Article 200, pocket veto, justiciability of inaction.

INTRODUCTION

In a landmark decision, it has been ruled by the Supreme Court in *The State of Tamil Nadu v. The Governor of Tamil Nadu & Anr. 2025 INSC 481* (hereinafter '***State of Tamil Nadu***') that indefinite delays caused by the Governor or President are justiciable, or in other words, the courts are empowered to inquire into the delay, ushering in a new era for Indian polity. The Court has prescribed timelines for the Governor to grant or withhold his assent on Bills that have been passed by the State Legislature. With an invocation of Article 142[1], the Court granted deemed assent to the pending Bills. The move has met with mixed reactions, with critics deeming it an overreach of the judiciary, while the proponents laud the move for accountability in governance.

The matter finds its genesis in the debate whether a 'pocket veto' i.e. the inaction (not withholding assent or granting it) of the chief executive (the President or a state Governor) on a piece of legislation, causing it to be in a state of limbo, is available to the President or state Governors.[2] A close synonym of pocket veto is the 'absolute veto', which refers to the *simpliciter* withholding of assent, thereby killing it. An absolute veto is a formal declaration, while a pocket veto is inaction. Pocket vetoes have been exercised in the past. Famously, in the 1980s, President Zail Singh exercised a pocket veto on the Indian Post Office (Amendment) Bill, 1986, passed by the Rajiv Gandhi government, due to disagreements with the provisions of the Bill which gave sweeping powers to the Government to intercept and read mail.[3] The debates of the Constituent Assembly lend credence to the notion that, while the Governor possesses some discretion in exercise of his powers, it is a general rule that he is bound by the aid and advice of his Council.[4] Article(s) 111[5] and 200[6] are superimposable insofar they both lay down the mechanism for the granting of assent by the President and Governor respectively, save for the absence of the proviso to reserve a Bill for the President's deliberation in Article 111. The substantive provisions of Article(s) 111 and 200 do not possess an explicit timeline, nor any mechanisms for the granting of deemed assent as found in other jurisdictions. Moreover, the exercise of any discretion by the constitutional heads of government is not

[1] INDIA CONST. art. 142, cl. 1.
[2] Louis Fisher, *The Pocket Veto: Its Current Status*, CRS, 1 (2001), https://web.archive.org/web/20191109140709/https://www.senate.gov/reference/resources/pdf/RL30909.pdf
[3] K.C. SINGH, THE INDIAN PRESIDENT 146 (HarperCollins 2023).
[4] Samsher Singh v. State of Punjab (1974) 2 SCC 831
[5] INDIA CONST. art. 111.
[6] INDIA CONST. art. 200

plainly discernible from a bare reading of the Articles. Therefore, it is crucial to take into account the role of a constitutional head of state vis-à-vis the head of government.

THE OFFICE OF THE GOVERNOR

In the nascent stages of the Constituent Assembly, the office of the Governor was to be an elected office, thereby changing the character of India's polity to that of a Federation rather than a Union.[7] The Westminster-style of cabinet government does not provide for *de facto* head of state like the American Presidential system.[8] Considering the public at large, the Constituent Assembly, towards completion of the Constitution, opted for the office of the Governor to be a nominated one, rather than an elected office. Fears of friction between an elected, therefore a partisan party man Chief Minister and another elected partisan party man Governor could bring the government machinery to a standstill. It was deemed prudent by the Assembly that the Governor ought to be "*a constitutional head, a sagacious counselor and adviser to the Ministry*".[9] The unique position of the Governor as the representative of the Union and as the constitutional head of the State is more delicate in contemporary times. With the advent of multiparty politics at the Centre and State levels, it must be ensured that political vendetta does not impede the functioning of government. With these delicate dual responsibilities, it is appropriate to analyze whether the constitutional framework accords the Governor with discretionary powers to keep the legislation of a State *intra vires* of the Constitution.

DISCRETIONARY POWERS OF THE GOVERNOR

The Governor possesses a limited area of discretionary power in certain areas which are provided for in the Constitution.[10] This is a special responsibility that has been entrusted upon the Governor. In scenarios where there is no Council of Ministers to advise the Governor, he can exercise his powers as the constitutional head to restore normalcy.[11] Article 163 is the

[7] CONSTITUENT ASSEMBLY DEBATES, Book No. 8, May 30, 1949 *speech by* H.V. Kamath 428, available at https://www.slideshare.net/slideshow/constituent-assembly-debates-volume-viii-30-may-1949-discussion-on-draft-constitution-of-india-relating-to-provisions-of-cag-of-india/261444957 (last visited on June 23, 2025)
[8] 2, WALTER BAGEHOT, THE ENGLISH CONSTITUTION 48 (Chapman & Hall 1873)
[9] CONSTITUENT ASSEMBY DEBATES, Book No. 8, May 30, 1949 *speech by* Alladi Krishnaswami Ayyar 431, available at https://www.slideshare.net/slideshow/constituent-assembly-debates-volume-viii-30-may-1949-discussion-on-draft-constitution-of-india-relating-to-provisions-of-cag-of-india/261444957 (last visited on June 23, 2025)
[10] INDIA CONST. art. 163, cl. 2.
[11] Justice R.S. Sarkaria Commission, *Report of the Sarkaria Commission on Centre-State Relations,* Ch. IV, para 4.11.05-4.11.15

source wherefrom this power flows. The relevant portion has been reproduced below –

> ***163. Council of Ministers to aid and advise Governor.****—(1) There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.*
>
> *(2) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion*
>
> (Emphasis supplied)

The matters where the Governor can exercise discretion must be within the four corners of the Constitution. In ***Samsher Singh v. State of Punjab (1974) 2 SCC 831*** (hereinafter '***Samsher Singh***'), the Court declared a general principle that the Governor can "*exercise their formal constitutional powers only upon and in accordance with the advice of the Ministers save in a few well-known exceptional situations*". In a subsequent decision in ***M.P. Special Police Establishment v. State of M.P.*** (hereinafter '***M.P. Special Police***') which relied on ***Samsher***, clarified the scope of the second clause to Article 163. It noted that owing to the special position of the Governor in State law making, he must have certain discretionary powers which should aid in the restoration of law and order in the State. The discretionary powers laid down in ***M.P. Special Police*** pertained to —

1. "*Peril to democracy or democratic principles*"
2. "*Bias is inherent and/or manifest in the advice of the council of ministers*"
3. "*Council of ministers disables itself or disentitles itself*"
4. "*There would be a complete breakdown of the rule of law*"

Indeed, Article 356(1)[12] provides for President's Rule in a State which is contingent on the

[12] INDIA CONST. art. 356, cl. 1.

President receiving a report from the Governor. It is trite in law that the report and subsequent Proclamation of President's rule is under the ambit of judicial review.[13] It is not inaccurate to say that the role of a Governor is more than just a constitutional figurehead, but rather an active spectator, whose powers have been granted with the *bona fide* that in the event of a breakdown of government, he may ensure the safety of the people of the State by sending a report to the President to restore law and order.[14] In the scenario where a party has lost its majority in the Legislative Assembly and does not command a majority (a hung assembly), the Governor invites the second largest party to form a government.[15] It is not inaccurate to say gubernatorial discretion can best be described as a limited power designed and intended to maintain procedural continuity when democratic structures are in flux.

TIMELINES: HANGING SWORD OVER THE GOVERNOR?

State of Tamil Nadu has prescribed timelines upon the Governor (and the President) to grant or withhold assent to Bills. Article 200's urgent but vague phrasing of '*as soon as possible'* was a major point of contention. It is necessary to analyze what the denotation is by the timeline stipulated in Article 200.

Article 200 has a three-pronged structure, consisting of one substantive provision and two provisos. It is reproduced below –

> ***200. Assent to Bills.***—*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*

[13] S.R. Bommai v. Union of India (1994) 3 SCC 1
[14] Justice R.S. Sarkaria Commission, *supra* note 11.
[15] *Id.*

> *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 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.*

(Emphasis supplied)

The procedure in the second proviso is a prerequisite for the Article 201 to apply. The use of '*shall*' in the substantive provision mandates the picking of an option. The coordinating conjunction '*or*' denotes a strong disjunctive syllogism i.e., the options therein are mutually exclusive to each other. If it were not so, the Governor could withhold assent and grant it at the same time, giving way to incoherence. Therefore, the three options are mutually exclusive, and one option must be picked. With the granting of assent, the legislative mechanism concludes, and the Bill has the full force of the law as an Act. The discourse begins with the picking of the second option viz. withholding of assent and the timeline therein. The Governor must '*as soon as possible*' return the Bill with a message that the Assembly will reconsider the Bill with some recommended amendments. This vague timeline, while doubtless in its demand for expediency, has lent itself to being abused by Governors by simply doing nothing to the Bills presented to them. The Supreme Court noted that there is no scope for a pocket veto in the Constitution. The *raison d'être* of a representative democracy is to ensure that the aspirations of the people are reflected in the functioning of the government through those whom they have elected as the most faithful representatives of their interests.[16] It pertinent to note that this timeline is not akin to a deadline. It does not emanate from the Article *per se*. Rather, it serves as a guide to the Courts to analyze whether inaction is no longer *de minimis*. Therefore, it is not a legislative amendment of the provision but a judicially evolved metric for constitutional review. If the Governor fails to adhere to the timeline, such inaction becomes subject to judicial scrutiny.

[16] GRANVILLE AUSTIN, THE INDIAN CONSTITUTION 55 (Clarendon Press Oxford 1966)

After all, to derive power from the Constitution is, by necessity, to remain bound by its core values, most notably, the balance among its basic features.[17]

CENTRE-STATE IMPLICATIONS UNDER ARTICLE 201

There is another facet to this discussion. The procedure that follows if the third option is picked i.e., the reservation of Bills for the deliberation of the President. Article 201 prescribes the procedure in that contingency. It is reproduced below –

> ***201. Bills reserved for consideration****.—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 is 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.*
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> (Emphasis supplied)

One may notice the conspicuous absence of the compulsion of granting of assent in Article 201, as observed in Article 200 and its Presidential equivalent Article 111. An analysis as to why this is so, is fundamental to the dynamics between the Centre and States of India. The Sarkaria Commission (1988), the Punchhi Commission (2010) and the Venkatachaliah Commission (2002) analyzed this question. The Sarkaria Commission noted that the reason for the strain in Centre-State relations is due to extensive delays in the disposal of Bills that have been reserved for the consideration of the President.[18] It also recommended the inclusion of a timeline upon the President in Article 201.[19]

[17] Minerva Mills Ltd. & Ors vs Union Of India & Ors. (1980) AIR 1789
[18] Justice R.S. Sarkaria Commission, *Report of the Committee on Centre-State Relations,* Ch. V, para 5.14.01-5.14.03
[19] *Id.* para 5.16.01-5.16.04

To develop the next discussion, some context as to how the reference to the President in Article 201 functions on the ground level is needed. The reference to the President made by the Governor under Article 201 are sent with a message. The Ministry of Home Affairs acts as the nodal ministry of the President. It deliberates upon the issues, then sends the Bill to the appropriate Ministry which has the subject matter expertise to deal with said issues. A memorandum dated 4.02.2016 laid down a time limit upon the concerned Ministries to dispose of the various State Bills reserved for the President.[20] Any issues that the Ministry concerned had with the Bill had to be communicated with the Home Ministry within 15 days, failure of which would require the Ministry to explain the delay. A month was prescribed as the time for Inter-Ministerial consultation. A delay of which would be construed as concurrence by the State Ministry.[21] Furthermore, the entire process of finalizing the Bills reserved for the President must be done within three months.

It is often seen that the strain between Centre and States exacerbates when State legislation is delayed when Bills are reserved by the Governor for the President on the backdrop of multiparty politics. Therefore, the step of prescribing a timeline for the President for deliberating upon Bills reserved for him under Article 201 is grounded and a natural *sequitur*. There is no question of the President being obligated by the Constitution to give his assent under Article 201, as the phrase '*for his consideration*' is used. But this cannot be extrapolated to keep Bills under an indefinite limbo. It is prudent and provident for India's polity that State Governments have a redressal mechanism against unconstitutional means that seek to thwart their working. This principle has been corroborated in prior decisions of the Supreme Court. ***Keisham Meghachandra Singh v. Speaker, Manipur Legislative Assembly and Ors (2021) 16 SCC 503*** also laid down a similar three-month threshold for deciding disqualification petitions before the Speaker of the Legislative Assembly, therefore the issues were not found to be *res integra*.

The catena of decisions reached by the Supreme Court reinforce and bolster the separation of powers that the framers envisaged for India. The deliberate omission of '*not more than six weeks*' in Article 91 (the predecessor to Article 111) lends credence to the notion that the framers hoped and believed that the President would act without *mala fides* and dispense his

[20] Memorandum from the Ministry of Home Affairs to the Secretaries, Ministries/Departments of the Government of India, (February 2, 2016) https://mowr.nic.in/Previous-site/circulars/parl/parl_2016_03_18.pdf (last visited June 24, 2025)
[21] *Id.*

duties with promptitude.[22] But this was not to be so as pending legislation is just one of the many cracks in the relationship between the Centre and States. As alluded to prior, the Sarkaria Commission analysed this very question and recommended that time limits should be prescribed to the Governor and President.[23] Various other State Governments viz. Kerala, Punjab, Telangana have approached the Supreme Court with a similar grievance—their Governors refusing to act on State legislature. In the wake of ***State of Tamil Nadu***, the President invoked Article 143[24], the advisory jurisdiction of the Supreme Court, to seek clarifications on pertinent questions.[25] It remains to be seen how the new timelines will change the dynamic between a State Government and its Governor, and also between the Union Government and the President.

COMPARISIONS WITH FOREIGN JURISDICTIONS

The granting of assent is an integral part of the legislative mechanism in a representative form of democracy. To ensure a holistic analysis of this mechanism, it is apposite to analyze some foreign jurisdictions. Jurisdictions comparable to India, whether they follow Westminster traditions or operate under federal systems, generally uphold the principle that once legislation is passed, the constitutional heads of the respective jurisdictions do not possess vetoes but can only return legislation if they find it manifestly against the Constitution. In the United Kingdom, the process of royal assent is governed by settled constitutional convention. Once a bill has successfully passed both Houses of Parliament, the monarch is expected to grant assent promptly. Notably, no monarch has withheld royal assent since 1707.[26]

In Australia, Section 58 of the Constitution allows the Governor General to assent, withhold assent or reserve a bill. However, constitutional convention dictates that the Governor General must act expeditiously and on the advice of ministers.[27] While the Constitution does not specify a precise timeline, assent is expected to follow within a reasonable period.

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[22] CONSTITUENT ASSEMBLY DEBATES, Book No. 8, May 20, 1949 *speech by* Dr. B.R. Ambedkar 192, available at https://eparlib.nic.in/bitstream/123456789/763283/1/cad_20-05-1949.pdf (last visited on June 24, 2025)
[23] Justice R.S. Sarkaria Commission, *supra* note 18
[24] INDIA CONST. art. 143, cl. 1.
[25] VERDICTUM, https://www.verdictum.in/pdf_upload/reference-in-tamil-nadu-case-1712340.pdf (last visited on June 24, 2025)
[26] 5 ERSKINE MAY, A TREATISE UPON THE LAW, PRIVILEGES, PROCEEDINGS AND USAGE OF PARLIAMENT 494-495 (Butterworths 1863).
[27] AUSTRALIA CONST. art. 58.

Canada's model is closely aligned. Under Section 55 of the Constitution Act, 1867, the Governor General may assent, withhold assent, or reserve a bill.[28]

Article 75 of the Constitution of Pakistan stipulates that the President must either assent to a bill or return it with observations within ten days. If the bill is returned, reconsidered, and passed again, the President is required to assent within another ten days. Failure to do so results in assent being automatically deemed granted.[29]

Taken together, a consensus is observed: once legislation is duly passed, assent must be either granted within a fixed time or deemed to have been granted.

CONCLUSION

The office of the Governor was latent in the nascent days of India. With a single dominant party until the 1970s, friction between Centre and States was scarce. The political scenario has undergone significant changes and the role of the Governor has increased in potency. With a different party at the Centre and Opposition parties in the States[30], the powers of the Governor are found to be increasing in relevance owing to the unique role he occupies. The dynamics of the office have been analysed by three different commissions with all offering different shades of the same opinion. The wanton declarations of State Emergencies by Governors exercising their discretion has been subjected to judicial review.[31] It is a natural corollary to ensure inaction is also held up to the same. Comparisons with jurisdictions such as the United Kingdom, Canada, Australia and Pakistan reveals a consistent norm that inaction is forbidden for constitutional heads. In this new era, the office of the Governor must be understood as one bound by constitutional values, where constitutional silence cannot be construed as a licence for indefinite inaction but must be read in light of evolving norms of accountability and institutional restraint. Only then can the Governor fulfil his duty as a '*friend, philosopher and guide*'.[32]

[28] CANADA CONST. art. 55.
[29] PAKISTAN CONST. art. 75.
[30] Sudha Pai, *Regional Parties And The Emerging Pattern Of Politics In India*, 51 IJPS 393, 400-401 (1990)
[31] *Supra* note 13
[32] CONSTITUENT ASSEMBLY DEBATES, Book No. 8, June 1, 1949 *speech by* Pandit Thakur Das Bhargava 497 available at https://indiankanoon.org/doc/1648960/ (last visited on June 24, 2025)