
POCKET VETO IN FEDERAL SYSTEMS: A COMPARATIVE STUDY OF EXECUTIVE INACTION ON LEGISLATION IN INDIA, THE UNITED STATES, AND CANADA

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ABSTRACT

A major defect in the federal constitutional design is the absence of action by the executive on legislation, which is popularly known as a “pocket veto”. This paper explores the situation in India, the United States, and Canada. The study is motivated by the Supreme Court's April 2025 ruling in the case of *State of Tamil Nadu v. Governor of Tamil Nadu*, which introduced the concepts of ‘deemed assent’ and fixed timelines in Articles 200 and 201. That was the opinion of a Constitution Bench, which reversed it in its November 2025 judgment in the Presidential Reference case.

Using a doctrinal and comparative method, the paper looks at three models. In the United States, the issue is dealt with in constitutional language (in Article I, Section 7), and the courts in that country interpret the adjournment exception in *The Pocket Veto Case* and *Wright v. United States*. Canada has inherited the same powers under the Constitution Act, 1867, but has limited them by constitutional convention, and courts have accepted conventions without enforcing them. The Indian Constitution borrowed the power from the Canadian Constitution (Articles 200 and 201), and it has adopted it without the convention.

Introduction

The quietest step in the process of lawmaking in a federal democracy is the last step. If the bill passes the legislature, it will move to the executive hand, and the constitution may or may not specify how long the executive may retain the bill. The absence of a word is a veto without being said. This is what is commonly known as the “pocket veto”: the killing of a bill by sitting on it.

Recently, India has faced this issue to the greatest extent. According to the Constitution of India, the President (through Article 201) and the Governor (through Article 200) have the power to assent to, withhold assent from, or reserve a bill; however, there is no outer time limit mentioned in the two articles.¹ The gap was allowed for decades. In *State of Tamil Nadu v. Governor of Tamil Nadu*, decided in April 2025, a two-judge Bench of the Supreme Court gave a 1-3 month limit for assent to ten long-pending bills, invoking Article 142 of the Indian Constitution.² The President then asked the court's advice via Article 143 in November 2025; a Constitution Bench found that courts could not set timelines on the actions of the Governor or the President, that “deemed assent” was unconstitutional and that a court can intervene only to order action in a reasonable time when there is no explanation for inaction and it is prolonged.

This paper thus seeks to understand how two other federal systems address the same structural imbalance. Under the U.S. Constitution, Article I, Section 7, the United States is an express pocket veto nation, with the Supreme Court interpreting this clause as such in *The Pocket Veto Case* and *Wright v. United States*. The Indian provisions (Articles 200 and 201) are doctrinal descendants of the Constitution Act of 1867, sections 55 to 57, but Canada has domesticated these powers by convention, not judicial timetable.³

The paper aims to address four questions. How do the three constitutions define, limit or tolerate executive inaction on bills? What is the impact of inaction on state legislatures' autonomy? How far can the courts go in trying to salvage the stalls in the process without violating the separation of powers? Does convention, as enjoyed in Canada, safeguard better than judicial oversight, as sought in India? It assumes that constitutional text or long-standing

¹ The Constitution of India, arts. 200, 201.

² *State of Tamil Nadu v. Governor of Tamil Nadu*, 2025 INSC 481 (Supreme Court of India, 8 April 2025).

³ The Government of India Act, 1935, s. 32; The Constitution Act, 1867, 30 & 31 Vict., c. 3 (U.K.), ss. 55–57, 90.

convention, supported by constitutional accountability, is the strongest basis for mechanisms disciplining inaction; and that judicially invented timelines are structurally fragile. The method is doctrinal and comparative, with reliance on the constitutional texts as well as judgments and works of constitutional scholarship, and the three systems are compared based on the problems each solves, not with regard to institutional similarity.

1. Conceptual Foundations

Veto is a rejection of consent, and there are three main types in the constitution. An absolute veto stops the bill, and the legislature can only revive it by beginning the process over again. A suspensive veto, or a qualified veto, which, like the American presidential veto, requires an override with a two-thirds vote in each House and which returns the bill for reconsideration.⁴ The pocket veto is not similar. It is not a decision but the lack of one and acts by whatever ramifications the constitution assigns to silence.

Those consequences can be divided into three categories. A constitution can also have the provision of “deemed enactment” whereby if the executive doesn't act within a period of time specified in the constitution, then the bill becomes law, may attach deemed failure that causes the bill to lapse, or it may attach nothing and the bill languishes in limbo. The first is for the protection of the Legislature, the second for the protection of the Executive, and the third for the protection of whichever side is benefited by delay. Only the third is an open-ended weapon not to act. The American text adopts the first, but makes a narrow exception, while the Canadian text adopts the third, and provides a two-year rule of deemed failure for reserved bills.

The inquiry is guided by two principles. Separation of powers is the first. A veto is a power against the legislature's product. A court that interferes in the execution of the law runs the risk of also becoming the law; a court that does not interfere runs the risk of allowing the legislature to be executed. Federalism is the second. In the United States, where the federal executive does the pocket veto on the federal legislature, the issue is horizontal. In a sense, inaction is vertical: when the officer who assents to state bills is appointed by the central government, as is the case in India and Canada, then the central government may block the elected provincial legislature.⁵ The comparison is thus not quite complete. There is no central agent in the United States to

⁴ U.S. Const. art. I, § 7, cl. 2.

⁵ The Constitution of India, art. 155; The Constitution Act, 1867, s. 58.

monitor state bills, as state governors are elected and the state constitutions govern their own veto. It is still useful as a case of the pocket veto in the Constitution and in courts, and the only structural parallel is provided by Canada.

2. The United States: Codified Pocket Veto and Judicial Boundary-Setting

The bill becomes a law if it is not returned by the President for ten days (Sundays excepted) after it is presented, “unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.” Two points follow. The default remedy for silence is action. The text is against the executive that would delay, because inaction brings about law. Second, it's a small loophole: only if Congress adjourns can the pocket veto be used. It's more like a veto that prevents the other power from becoming unenforceable because of adjournment than a second veto.

It all depends on what is considered an adjournment that “prevents” return. The Pocket Veto Case (1929) occurs when the bill was presented to the President during the last ten days of the second session of the Sixty-ninth Congress, and that session was the Sixty-ninth Congress' final session. The Supreme Court affirmed the judgment of the pocket veto, saying that even if Congress designated an officer to receive messages, adjournment of the kind makes return impossible because the purpose of return is reconsideration by the House which sent the bill.⁶ The Senate had adjourned for three days, while the House was still in session, in *Wright v. United States* (1938), and the Secretary of the Senate had been authorised to take messages from the President. The Court decided that this brief recess was not enough to be an excuse for not returning, so the bill passed.⁷

Both decisions leave a hole in the law. It has been controversial whether the President can pocket veto while sitting “fields of their own” (in the middle of a session) or in an adjournment Congress arranged for him to receive messages (inter-session adjournments). Attempted pocket vetoes by courts below were found to have no effect when Congress had made arrangements; but in *Barnes v. Kline* the Supreme Court did not reach the question of the effectiveness of attempted pocket vetoes.⁸ Presidents have since tried to take a “protective return” of the bill back to Congress by claiming the return is not a pocket veto. The practice demonstrates the

⁶ *The Pocket Veto Case (Okanogan Indians v. United States)*, 279 U.S. 655 (1929).

⁷ *Wright v. United States*, 302 U.S. 583 (1938).

⁸ *Kennedy v. Sampson*, 511 F.2d 430 (D.C. Cir. 1974); *Barnes v. Kline*, 759 F.2d 21 (D.C. Cir. 1985), vacated as moot sub nom. *Burke v. Barnes*, 479 U.S. 361 (1987).

power and limitation of the text model. The fundamental rule is obvious, and the question of the residue is one of interpretation based on the text and purpose. But at the edges of the text, there is an invitation to contest, and the contestation is decided not by judges fashioning a new law, but by judges reading a clause.

The first is that, for India, there are two lessons. The question of silence is answered by the American Constitution in its own terms and in the legislature's favour. Where the written document leaves room for interpretation, the court does, and does not legislate. The "deemed assent" declared in the Tamil Nadu judgement is only superficially similar to the American default. In both countries, the American one is inscribed in the Constitution; the Indian one was provided by the Court.

3. Canada: Formal Powers and the Triumph of Convention

The template for the Indian provisions was taken from the Constitution Act, 1867. Section 55 provides that upon the presentation to the Governor General of a bill, he shall make a Declaration "according to his Discretion" whether he assents to it, whether he assents to it by reserving it for the Pleasure of the Crown, or whether he refuses his assent thereto. Section 56 gives the Crown in Council the power to refuse assent to an Act for a prescribed period after it receives a copy of the Act, and section 57 holds that a reserved bill is not in force unless the assent is signified within 2 years after it is presented. The provisions of this section are extended to the provinces as follows: the Lieutenant Governor shall be substituted for the Governor General, and the disallowance may be exercised within one year.⁹ The Lieutenant Governors are appointed by the Governor General in Council.¹⁰ The central structure, as later reproduced in Articles 200 and 201, can assent to, refuse or reserve a provincial bill, and can overrule the province.

Two aspects of the Canadian text are worthy of mention. The Act demands a declaration, and doesn't consider silence as any choice. And its only express time limits are the disallowance window and the two-year life of a reserved bill, the latter being a rule of deemed failure. There is no time limit on the action which must be taken upon a bill presented for the assent of the

⁹ The Constitution Act, 1867, ss. 55–57, 90.

¹⁰ *Ibid.*, s. 58.

Lieutenant Governor.

The powers were used in the early practice. From 1867 to 1943, Forsey's study shows over one hundred provincial Acts have been disallowed, and a considerable number of reservations have been made by the Lieutenant Governors. The Alberta crisis of 1937 was the most important one, when the Lieutenant Governor denied assent to three bills introduced by the Social Credit government and the federal government disapproved other provincial bills. In the *Reference re Disallowance and Reservation of Provincial Legislation* (1938), the Supreme Court of Canada determined that the powers continued to be legally valid. But the last disallowance was in 1943 and the last reservation in 1961, and the powers have been dormant since.

The courts are not the ones for these powers to be disobeyed. In the *Patriation Reference* (1981) the Supreme Court of Canada took a hard look at the distinction between law and convention: conventions govern the use of the law; they can be recognised by courts, but courts cannot enforce conventions.¹¹ Now it has become a settled convention that the Lieutenant Governor acts on the advice of the provincial ministry and that the federal government does not take the position that disallowance is relevant in regard to matters in provincial control. The subject is political. The refusal of assent or disallowance would lead to public condemnation and harm the officer(s) or government that made it.

The first part of the hypothesis is supported by Canada's experience, but with a caveat. The convention operates because several factors are in place: Firstly, the Crown's representative is a formal, not substantive, actor; secondly, generations of restraint have created an expectation of the Crown's representative not being able to personally stop an elected legislature. But convention is self-enforcing only as long as political actors decide to honour it, and it can be established only by their consent. The Canadian achievements are genuine, but can't necessarily be replicated.

4. India: The Battleground of Articles 200 and 201

Article 200 states that, when a state bill is presented to the Governor for his assent, he shall make a statement to that effect, or shall refuse to assent or shall reserve the bill for the consideration of the President. The first proviso allows the Governor, in the case of a bill which is not a Money Bill, to return it with a message "as soon as possible after the presentation", and

¹¹ *Reference re Resolution to Amend the Constitution*, [1981] 1 S.C.R. 753 (Can.).

the bill is again passed by the legislature, without amendment, the Governor shall not refuse his assent.¹² The President is to declare assent to or withhold assent to a reserved bill or send the bill back for reconsideration within six months of receipt within six months of the President's receipt of the bill according to Article 201. The article does not give any indication of a time for the main decision in either. The Governor shall be nominated by the President of the country and shall serve at the pleasure of the President.

The ancestry is evident. Section 32 of the Government of India Act, 1935 provided the provincial Governor with the same three alternatives; these alternatives were contained in Section 55 and 90 of the Constitution Act, 1867. The Constituent Assembly retained the structure, but altered the premise. Dr Ambedkar introduced the Governor under the new Constitution as a constitutional head, who works on the advice of ministers and has no authority to go against the advice of the elected government in any matter other than the specific ones specified in the Constitution as discretionary. The reason that there was no time limit is that a constitutional head of state was expected to act on advice, and to act quickly. This is the weak point: the assumption. The text borrowed the Canadian power, but without the Canadian convention that keeps it in check.

Judicial interpretation gradually curtailed the governor's authority. In *Shamsher Singh v. State of Punjab*, the Supreme Court ruled that the President and Governors act on ministerial advice unless the Constitution otherwise provides.¹³ *Nabam Rebia* circumscribed the Governor's discretion in Article 163 to those cases the Constitution has specified.¹⁴ In *State of Punjab v. Principal Secretary to the Governor of Punjab* (2023), the Court has ruled that a Governor who abstains from assent shall return the bill under the first proviso, and he cannot just lapse it.¹⁵ Commissions on the Centre–State relations had also pleaded for bills to be disposed of within a time limit.¹⁶

The case of the Tamil Nadu Governor came up due to the several bills which he did not give assent to, despite their passage by the Assembly on a second attempt, and his subsequent reservation of the bills for the President. The Bench ruled the Reservation illegal, and that the

¹² The Constitution of India, art. 200, first proviso; art. 201.

¹³ *Shamsher Singh v. State of Punjab*, AIR 1974 SC 2192.

¹⁴ *Nabam Rebia and Bamang Felix v. Deputy Speaker, Arunachal Pradesh Legislative Assembly*, (2016) 8 SCC 1

¹⁵ *State of Punjab v. Principal Secretary to the Governor of Punjab*, (2024) 1 SCC 384.

¹⁶ Sarkaria Commission, *Report of the Commission on Centre-State Relations* (Government of India, 1988); Punchhi Commission, *Report of the Commission on Centre-State Relations* (Government of India, 2010).

bills were deemed assented to if nothing were done after the periods of one to three months prescribed by the Bench for the Governor and three months for the President.¹⁷ There was a rationale behind this that was that Article 142 would allow the Court to do justice in the absence of any remedy provided by the text of the Article, and the requirement of democratic governance would not permit the indefinite delay and the 'as soon as possible' clause within the text.

The Union's response was quick. The Constitution Bench was referred 14 questions by the President, which resulted in the Constitution Bench opinion dated 20 November 2025. The Court first noted that Article 200 gives the Governor three choices; the text itself is intentionally ambiguous about the timing, and fixed timelines and deemed assent both replace the Court with another constitutional branch, which is an affront to the separation of powers. Article 142 would not have applied to that. The decisions made on Articles 200 and 201 are not justiciable on their merits, but a constitutional court can issue a limited direction to act within a reasonable time without taking into consideration the merits of the decision.¹⁸

The two decisions reflect two different interpretations of the word "silence. In the April opinion, it's considered a void that the Court is responsible for plugging to safeguard the legislature; in the November ruling, it's seen as a clear directive of flexibility that only the Constitution's authors can close. The opinion is binding on the separation of powers issue because a court that finds a bill to be law has taken on the functions of the Governor and President. But it has costs. It does not state how long is too long, it offers no repercussion for failing to obey a direction for which there is no further litigation, and it puts the state legislature in the hands of the official whose delay it is concerned with. The pocket veto is bound to continue to exist in every but the most unusual circumstances. However, the formal connection between an advisory opinion and prior judgment has narrowed the path of the courts, and the issue has been restored to where it started: nowhere.

5. Comparative Analysis: Federal Friction and Democratic Legitimacy

Table 1 sets the three systems side by side on the matters the research questions identify.

¹⁷ *State of Tamil Nadu*, supra note 2.

¹⁸ *In re: Assent*, supra note 3.

Table 1: Executive inaction on bills in three federal systems

	United States	Canada	India
Source	Art. I, § 7 (text)	Ss. 55–57, 90 and convention	Arts. 200–201 and judicial gloss
Effect of silence	Law after ten days, unless adjournment prevents return	No silent option; reserved bill lapses after two years	None prescribed; bill remains pending
Time limit	Ten days (Sundays excepted)	Two years (reserved bills only)	None after November 2025
Judicial role	Interprets adjournment clause	Recognises but does not enforce convention	Limited direction to act in reasonable time
Real check	Text and Congress's override	Political accountability	Political negotiation and litigation

First, silence. In the American Constitution, silence is given an outcome and an enactment; silence is only allowed when Congress' own act makes return impossible. Canada's text has no hiding place and provides a reserved bill with a life of two years. India gives silence no repercussions. The difference will determine who wins the benefit from delay. The American rule is that if the executive fails to pass the bill, the delay costs him his bill; the Indian rule is that if he fails the legislature, the delay costs the legislature.

Second, the courts. The judges in the United States interpret a text and so are not culpable for making rules. But in Canada, the judiciary refuses to enforce convention, keeping it out of the dispute. The judiciary was invited to step in in India, where no other institution was able to come up with a creative answer and then hold back. These are institutionally explicable responses. Both are unstable, as the latter suggests no remedy for the legislature and the other charges overreach.

Third, federalism. The officer who can delay provincial or state bills in Canada and India has been appointed by the centre; the power was intended as a means of central oversight. If the convention is followed and the representative acts accordingly, this makes the instrument a formality and thus safeguards the autonomy of the province. The convention is not reliable in

India. The petitions from Punjab, Kerala, Telangana and Tamil Nadu were filed in the Supreme Court in a matter of few days, indicating that the event in Tamil Nadu was not as an aberration but it was the culmination of the pattern. When a Governor is appointed, and a government of a different political orientation is in place in a State, delay becomes a central influence and the autonomy of the State is compromised.

Fourth, the hypothesis. It is qualifiedly supported by the comparison. It establishes that the most permanent are those that have been enshrined in the constitution (U.S.A.) or become part of accepted political practice (Canada), and that the judicial improvisation in India was short-lived, and that a larger Bench backed off. There are three qualifications warranted. First, the reversal does not reveal that a textually based judicially codified standard would be impractical; it only indicates that the Court had a split on the constitutional issue, which does not constitute a lack of practicability. Second, the November opinion contains a judicially enforceable reasonable-time direction that remains unaffected by the reversal. Second, convention is not a good replacement when the political conditions that sustain it are lacking, and it cannot be created by law. Third, no text is self-executing: in America, there have been long debates over the exceptions to a clear rule. On this assessment, textual evidence is the strongest, convention is the most useful, and judicial construction is the least secure of the three.

6. Conclusion and Recommendations

When bills sit without action in the legislature, they are not merely a "management error. It's a structural weakness in federal architecture, and the Indian experience is that it's exceptionally prominent. The comparative record indicates that it can be best kept in check, either by codification, as in Article I, Section 7 or by a settled convention, as in Canada. Attempts have been made to resolve it by judicial construction in India, which has been a failure.

For India, it's a practical decision. A convention cannot be instituted by law or judicial enactment, and the conditions that have been found necessary to support a convention here are not assured elsewhere. The more reliable course is a constitutional amendment under Article 368, which provides for what the Constitution lacks, and steps taken to establish convention over time. There should be five elements in the framework. (i) A time limit of three months for the Governor's decision on a bill, and of six months for the President's decision on a reserved bill. (ii) A rule of "deemed assent" of ordinary bills, similar to the rule of "deemed assent" of the Constitution for bills of attainder, but not the same; namely, that when the period expires,

without prior court action, they should be deemed to have been assented to by the Court. (iii) An exception for bills which require Presidential assent on account of repugnancy under Article 254(2) and that the silence of the President must be construed as a duty to decide/reject the bill with reasons rather than a duty to assent. (iv) The obligation to provide written reasons whenever a bill is reserved or returned and to make the decision subject to political and judicial review. (v) Limited judicial oversight, as acknowledged in the November 2025 opinion, as a 'backstop'.

The convention should be developed intentionally along with the text. The Inter-State Council under Article 263 provides a suitable platform for establishment of a code of practice for the conduct of Governors and the age-old recommendations for appointments of Governors after consulting with the Chief Minister of the State, if implemented, would help to make the office one that is accepted by all political actors as impartial.¹⁹ In the absence of an amendment, courts can fill in the meaning of the “reasonable time” requirement by considering the period of delay, the reasons given and the content of the bill. This would have the same effect as the November opinion, but would not involve a return to fixed timelines.

All three systems share a common underlying principle that these non-elected functionaries should not be able to beat an elected legislature at its own game, and this is the reason for all of these proposals. The solution must be a text or convention or a court, whichever will have the greatest likelihood of being sustained in the political context in which it will have to function.

¹⁹ Sarkaria Commission, *supra* note 16; The Constitution of India, art. 263.

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