
CONSTITUTIONAL LIMITS ON GUBERNATORIAL ASSENT: A CASE COMMENTARY ON IN RE: ASSENT, WITHHOLDING OR RESERVATION OF BILLS BY THE GOVERNOR AND THE PRESIDENT OF INDIA

Swathi Krishna K, LLM, KLE Law College, Bengaluru

Introduction

The advisory opinion delivered by the Supreme Court of India in *In Re: Assent, Withholding or Reservation of Bills by the Governor and the President of India* marks an important moment in the development of constitutional jurisprudence relating to federal governance and the functioning of constitutional offices in India. The case deals with the constitutional powers of the Governor and the President in the legislative process, particularly with respect to granting assent to Bills passed by State Legislatures.

In the Indian constitutional framework, the Governor plays a crucial role in the legislative procedure of a State. Once a Bill is passed by the State Legislature, it must be presented to the Governor for assent under Article 200 of the Constitution. The Governor may grant assent, withhold assent, return the Bill for reconsideration by the Legislature, or reserve the Bill for the consideration of the President. When a Bill is reserved for the President, Article 201 governs the decision-making process.

Although these provisions outline the procedural role of constitutional authorities in the legislative process, they do not specify any clear timeline within which the Governor or the President must act. This absence of an explicit timeframe has created practical difficulties in the functioning of democratic institutions. In recent years, several State Governments raised concerns regarding delays by Governors in granting assent to Bills passed by their legislatures. In some cases, the Bills remained pending for long periods without any decision being taken.

Such delays raised serious constitutional concerns because they appeared to obstruct the legislative process and undermine the will of the elected representatives of the people. Critics argued that indefinite delay effectively amounts to a “pocket veto,” allowing constitutional

authorities to indirectly block legislation without formally rejecting it.

In order to clarify the constitutional position regarding these issues, the President of India invoked the advisory jurisdiction of the Supreme Court under Article 143 of the Constitution. This provision empowers the President to seek the opinion of the Supreme Court on questions of law or fact that are of public importance.

The reference required the Court to examine the scope and limits of the powers of the Governor and the President under Articles 200 and 201 and determine whether prolonged inaction is constitutionally permissible. The Court was also required to address broader constitutional principles such as federalism, separation of powers, and democratic accountability.

The advisory opinion delivered by the Supreme Court is therefore significant not only for resolving the immediate controversy but also for strengthening the constitutional framework governing the relationship between the Union and the States.

Constitutional Background

The Indian Constitution establishes a system of parliamentary democracy combined with a federal structure of governance. While legislative powers are distributed between the Union and the States, the Constitution also creates institutional mechanisms to maintain coordination and balance between these two levels of government.

The office of the Governor occupies an important position within this constitutional framework. The Governor acts as the constitutional head of the State and performs functions similar to those of the President at the national level. However, the Governor is appointed by the President and therefore represents a link between the Union and the States.

During the drafting of the Constitution, the Constituent Assembly debated extensively on the powers and functions of the Governor. Some members expressed concern that the Governor might interfere in the functioning of State Governments if given excessive discretionary powers. Others argued that certain discretionary powers were necessary to maintain constitutional balance and prevent misuse of legislative authority by State Governments.

Ultimately, the Constitution adopted a system in which the Governor generally acts on the aid and advice of the Council of Ministers, except in certain situations where the Constitution

expressly grants discretionary powers.

Articles 200 and 201 form part of this constitutional arrangement. These provisions were designed to ensure that State legislation complies with the Constitution and does not conflict with national interests. However, the provisions were never intended to allow constitutional authorities to obstruct the legislative process indefinitely.

The absence of a clear time limit in these provisions reflects the expectation that constitutional authorities will act responsibly and in good faith. The framers of the Constitution assumed that constitutional conventions and democratic norms would guide the exercise of such powers.

However, the growing political tensions between the Union and several States in recent years exposed the limitations of relying solely on constitutional conventions. This created the need for judicial clarification regarding the proper interpretation of these provisions.

Facts Leading to the Reference

The factual background of the case involves several instances in which State Legislatures passed Bills that were subsequently presented to the Governor for assent.

After receiving the Bills, the Governors did not immediately grant assent or return them to the Legislature. Instead, the Bills remained pending for extended periods without any clear explanation.

In certain cases, the Governors eventually reserved the Bills for the consideration of the President. However, the reasons for doing so were not always clearly communicated.

These actions raised several constitutional questions. The State Governments argued that indefinite delay in granting assent effectively prevented the laws from coming into force, thereby undermining the authority of the Legislature.

On the other hand, it was argued that the Constitution grants certain discretionary powers to the Governor and that the absence of a specific time limit implies that the Governor has flexibility in deciding when to act.

In order to resolve these competing interpretations, the President referred the matter to the Supreme Court for an authoritative opinion.

Nature and Strength of the Bench

The case was heard by a five-judge Constitution Bench of the Supreme Court of India. Constitution Benches are constituted when a case involves substantial questions relating to the interpretation of the Constitution.

The Bench was presided over by the Chief Justice of India and included four other senior judges of the Court. The composition of a Constitution Bench reflects the importance and complexity of the issues involved.

Since the case concerned the powers of constitutional authorities and the functioning of the federal system, it was considered necessary for the matter to be decided by a larger bench rather than a regular two- or three-judge bench.

Questions of Law Involved

The Supreme Court was required to examine several constitutional questions arising from the reference made by the President. These included:

Whether a Governor can indefinitely delay granting assent to a Bill under Article 200 of the Constitution?

Whether the Governor is bound by the aid and advice of the Council of Ministers when exercising powers under Article 200?

Whether the decision of the Governor to reserve a Bill for the consideration of the President is subject to judicial review?

Whether the President can delay taking action on Bills reserved under Article 201 without any time limitation?

Whether the Supreme Court has the authority to interpret constitutional silence and prescribe reasonable timelines for constitutional authorities?

Whether prolonged inaction by the Governor or the President violates the principles of federalism and democratic governance?

These questions required the Court to examine not only the text of the Constitution but also the broader constitutional principles that guide the functioning of democratic institutions.

Legal Provisions and Constitutional Principles

The Court's analysis primarily focused on the interpretation of the following constitutional provisions:

Article 200 deals with the Governor's power to grant assent to Bills passed by the State Legislature. The Governor may grant assent, withhold assent, return the Bill for reconsideration, or reserve it for the consideration of the President.

Article 201 governs the procedure when a Bill is reserved for the President. The President may grant assent or withhold assent after considering the Bill.

Article 163 provides that the Governor shall act on the aid and advice of the Council of Ministers except in matters where the Constitution expressly grants discretion.

Article 143 empowers the President to seek the advisory opinion of the Supreme Court on questions of law or fact of public importance.

In addition to these provisions, the Court relied on several constitutional doctrines, including federalism, rule of law, separation of powers, parliamentary democracy, constitutional morality, and cooperative federalism.

Arguments

Arguments of the States

The States argued that the Governor's role in the legislative process is primarily constitutional and ceremonial. They contended that allowing the Governor to delay assent indefinitely would undermine the authority of the Legislature and defeat the democratic mandate of the people.

The States further argued that the Governor is normally required to act on the aid and advice of the Council of Ministers. Therefore, the Governor cannot exercise personal discretion in a manner that obstructs the legislative process.

They also argued that constitutional powers must be exercised in a manner consistent with democratic principles and that judicial review should be available to prevent misuse of such powers.

Arguments of the Union Government

The Union Government argued that the Constitution intentionally provides a certain degree of discretion to the Governor in matters relating to legislative assent.

It was argued that the absence of a specific time limit in Articles 200 and 201 indicates that the Constitution allows flexibility in the exercise of these powers.

The Union also emphasized that the power to reserve Bills for the President serves as an important constitutional safeguard to ensure that State legislation does not conflict with national interests or constitutional provisions.

Furthermore, it was argued that judicial interference in such matters could disrupt the separation of powers between the judiciary and the executive.

Decision and Reasoning of the Court

The Supreme Court held that indefinite delay in granting assent to Bills passed by State Legislatures is inconsistent with the constitutional scheme.

The Court observed that the Constitution must be interpreted in a manner that promotes democratic governance and prevents constitutional paralysis.

Although Articles 200 and 201 do not prescribe a specific time limit, the Court held that constitutional authorities must act within a reasonable timeframe.

The Court further held that the Governor generally acts on the aid and advice of the Council of Ministers and that discretionary powers must be exercised only in exceptional circumstances.

With regard to the reservation of Bills for the President, the Court emphasized that such decisions must be based on legitimate constitutional reasons and cannot be arbitrary.

The Court also clarified that the actions of constitutional authorities are not completely immune

from judicial review. Courts may intervene when constitutional powers are exercised in a manner that violates the Constitution.

Ratio Decidendi

The central principle established by the Court is that the powers of the Governor and the President under Articles 200 and 201 must be exercised in accordance with democratic principles, federal structure, and constitutional morality.

Indefinite delay in granting assent to Bills passed by the Legislature undermines the legislative process and violates the spirit of parliamentary democracy.

Therefore, constitutional authorities must act within a reasonable timeframe, and their actions are subject to judicial review in cases of constitutional abuse.

Obiter Dicta

The Court also made several important observations regarding the role of constitutional authorities.

It emphasized that Governors are constitutional functionaries and not political actors. The office of the Governor is expected to function with neutrality and respect for democratic institutions.

The Court also stated that constitutional silence cannot be interpreted as permission for inaction. Instead, constitutional provisions must be interpreted in light of the broader values of the Constitution.

These observations highlight the importance of constitutional morality in the functioning of democratic institutions.

Impact on Society, Legal Position and Constitutional Governance

Impact on Society

The advisory opinion delivered by the Supreme Court in *In Re: Assent, Withholding or Reservation of Bills by the Governor and the President of India* has important implications for

society at large because it strengthens democratic governance and ensures greater accountability of constitutional authorities.

One of the most significant social impacts of the decision is that it protects the democratic mandate of the people. In a representative democracy, laws are enacted by elected representatives in the legislature who reflect the will of the electorate. When Bills passed by these legislatures are delayed indefinitely by constitutional authorities such as the Governor, it effectively obstructs the implementation of policies that have been approved through democratic processes. By declaring that indefinite delay is inconsistent with the constitutional scheme, the Supreme Court has reinforced the principle that the will of the legislature must not be frustrated through administrative inaction.

The decision also promotes public confidence in constitutional institutions. In recent years, controversies surrounding delays in granting assent to Bills created public perception that constitutional offices might be used for political purposes. The Court's intervention clarifies that Governors and the President must act within constitutional limits and cannot arbitrarily delay decisions. This clarification helps restore trust in the functioning of constitutional offices and ensures that these institutions remain accountable to constitutional principles rather than political considerations.

Another important societal impact of the judgment is the strengthening of cooperative federalism. India's federal system is based on a delicate balance between the Union and the States. Conflicts between State Governments and Governors can create administrative deadlock and political instability, which ultimately affects governance and public welfare. By clarifying the scope of powers under Articles 200 and 201, the Court has helped reduce the possibility of such conflicts and has reinforced the importance of cooperation between different levels of government.

The judgment also indirectly contributes to good governance and policy implementation. Many State Bills relate to areas such as education, public health, social welfare, agriculture, and local governance. When these Bills are delayed indefinitely, the implementation of important public policies is also delayed. By emphasizing the need for timely decision-making, the Court ensures that legislative measures aimed at improving the welfare of citizens can be implemented without unnecessary obstruction.

Furthermore, the decision highlights the ethical responsibilities associated with holding constitutional office. The Court's emphasis on constitutional morality sends an important message that public officials must exercise their powers responsibly and in accordance with the spirit of the Constitution. This promotes a culture of accountability and integrity within public administration.

Overall, the societal impact of this judgment lies in its ability to strengthen democratic institutions, promote transparency in governance, and ensure that constitutional powers are exercised in a manner that serves the interests of the people.

Impact on the Legal Position

The advisory opinion significantly clarifies the legal position regarding the powers of the Governor and the President in the legislative process.

Before this decision, there was considerable ambiguity regarding whether the Governor could delay granting assent to Bills for an indefinite period. The Constitution did not specify a time limit, and this absence of explicit guidance allowed different interpretations. Some authorities argued that the Governor possessed broad discretionary powers, while others maintained that such discretion was limited by constitutional conventions.

The Supreme Court's opinion resolves this ambiguity by establishing that indefinite delay is inconsistent with the constitutional framework. Although the Constitution does not prescribe a specific time limit, the Court clarified that constitutional authorities must act within a reasonable timeframe. This interpretation ensures that the legislative process remains effective and that constitutional powers are not misused.

The judgment also clarifies the relationship between the Governor and the Council of Ministers. The Court reaffirmed the principle that the Governor generally acts on the aid and advice of the Council of Ministers, except in limited circumstances where the Constitution expressly grants discretion. This interpretation strengthens the principle of parliamentary democracy, where real executive authority rests with the elected government.

Another important legal implication of the judgment is the recognition that actions of constitutional authorities are subject to judicial review. While the Governor and the President enjoy certain constitutional protections, their decisions cannot be completely insulated from

scrutiny when they violate constitutional principles. The Court clarified that judicial review may be exercised in cases of constitutional abuse, arbitrariness, or mala fide exercise of power.

The decision also strengthens the doctrine of constitutional accountability. By emphasizing that constitutional authorities must act within reasonable time limits and in accordance with democratic principles, the Court has introduced an important standard for evaluating the legality of executive actions.

Additionally, the judgment contributes to the development of federal constitutional jurisprudence. It clarifies the limits of the Governor's role within the federal system and ensures that State Governments can function without undue interference from unelected authorities. This strengthens the autonomy of States within the constitutional framework.

In this way, the advisory opinion has significantly reshaped the legal understanding of Articles 200 and 201 and has provided clear guidance for future constitutional practice.

Impact on Constitutional Governance

The advisory opinion has significant implications for the functioning of India's federal system.

First, it strengthens the authority of State Legislatures by ensuring that their legislative decisions cannot be obstructed indefinitely by constitutional authorities.

Second, it reinforces the principle that discretionary powers must be exercised responsibly and in accordance with constitutional values.

Third, it clarifies that constitutional authorities are subject to judicial review when their actions violate the Constitution.

Analysis

From a constitutional perspective, this advisory opinion represents an important step toward strengthening democratic governance in India.

The Supreme Court adopted a balanced approach by interpreting the Constitution in a manner that preserves both flexibility and accountability.

Instead of imposing rigid timelines, the Court introduced the concept of a reasonable timeframe. This approach ensures that constitutional authorities cannot misuse their powers while still allowing them sufficient discretion to perform their duties.

The judgment also highlights the importance of constitutional morality in the exercise of public power. Constitutional authorities must act in good faith and with respect for democratic principles.

In the broader context of Indian federalism, the decision reinforces the idea that the Union and the States must function in a spirit of cooperation rather than confrontation.¹⁴

Conclusion

The advisory opinion delivered by the Supreme Court in *In Re: Assent, Withholding or Reservation of Bills by the Governor and the President of India* represents a landmark development in constitutional law.

By clarifying the scope of powers under Articles 200 and 201, the Court has strengthened democratic accountability and ensured that the legislative process cannot be obstructed through indefinite delay.

The judgment reinforces the foundational principles of the Indian Constitution, including federalism, rule of law, and parliamentary democracy.

Ultimately, the decision serves as an important reminder that constitutional powers must always be exercised in a manner that promotes democratic governance and respects the will of the people.

References / Citations

The Constitution of India, 1950.

In Re: Assent, Withholding or Reservation of Bills by the Governor and the President of India,
Advisory Opinion of the Supreme Court of India under Article 143.

State of Tamil Nadu v. Governor of Tamil Nadu.