

STATES IN COURT AGAINST THEIR GOVERNORS

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A battery of non-BJP ruled States have approached the Supreme Court accusing their Governors of using a non-existent discretion to unreasonably delay the passing of crucial Bills into law. The Bills in limbo cover sectors such as public health, higher education, Lokayukta and cooperative societies.

The accusations

Tamil Nadu has accused Governor R.N. Ravi of toying with the citizens' mandate by sitting on the Bills by neither assenting nor returning them. It said the Governor has positioned himself as a "political rival" who has caused a "constitutional deadlock" by simply sitting on the Bills for months together. Kerala, in its separate petition, said that eight proposed laws passed by its Legislative Assembly were pending with the Governor, not for months, but years. Of the eight, three Bills were waiting for the Governor's word for over two years.

Punjab complained that seven of its Bills were stuck with the Governor since June, threatening to bring the administration to a "grinding halt".

The Supreme Court had to intervene in April for the Telangana Governor to clear Bills pending since September 2022, compelling advocate Dushyant Dave, appearing for the State, to submit that legislatures in Opposition-ruled States were at the mercy of the Governors, who had become a law unto themselves.

The process of granting assent

Article 200 of the Constitution covers the options before the Governor when a Bill passed by both Houses of the Legislature is presented to him. The first proviso to the Article says the Governor could either declare his assent to the Bill or withhold the assent if it is not a Money Bill or reserve the law for the consideration of the President if he thinks the Bill derogates from or endangers the power of judicial review of the High Court.

In case the Governor chooses to withhold assent, he should return the Bill "as soon as possible" with a message requesting the Legislative Assembly to reconsider the proposed law or any specified

provisions or suggest amendments. The Assembly would reconsider and pass the Bill, and this time, the Governor should not withhold his assent. In short, the constitutional head of the State would bow to the considered decision of the elected representatives of the people.

Do Governors have discretion?

Governors did have a discretion to return Bills before the first proviso in the draft Article 175 (now Article 200). This was amended by the Constituent Assembly in 1949. Though it was thought that the Governor's exercise of discretion would act as a "potential check on disruptive legislative tendencies" by States, Dr. B. R. Ambedkar, while introducing the amended proviso, said "in a responsible government there can be no room for the Governor acting on discretion".

T. T. Krishnamachari, a Constituent Assembly member from Madras and later Finance Minister, approved of the amendment, saying "the Governor cannot act on his own, he can only act on the advice of the Ministry... When a Governor sends a Bill back for further consideration, he does so expressly on the advice of his Council of Ministers". Mr. Krishnamachari explained that if the Bill passed by the Legislative Assembly needs modification or has garnered adverse public opinion, the government uses the Governor to return the Bill to the Lower House as quickly as possible for re-legislation. The first proviso to Article 200 is thus a "saving clause" and retains the discretion over the fate of the Bill solely in the hands of the State Cabinet.

Article 163 makes it clear the Governor is not expected to act independently. The top court in the Shamsher Singh case verdict has held that as a formal head of the State a "Governor exercises all his powers and functions conferred on him by or under the Constitution on the aid and advice of his Council of Ministers save in spheres where the Governor is required by or under the Constitution to exercise his functions in his discretion." The assent or return of the Bill does not involve the discretion of individuals occupying the Governor's post.

By when should Bills be returned?

The first proviso of Article 200 says it should be "as soon as possible". The Constitution is silent on what exactly this phrase means. The Supreme Court has interpreted "as soon as possible" in the proviso to mean "as early as practicable without avoidable delay" in its 1972 judgment in Durga Pada Ghosh versus State of West Bengal. Justice (now retired) Rohinton F. Nariman, in his 2020 judgment in the Keisham Megha Chandra Singh case, said a 'reasonable time' would mean three months.

The States have urged the court to interpret the phrase in the proviso and fix a time limit by which Governors should assent or return a Bill. The 1988 Sarkaria Commission report on Centre-State relations had suggested consultation with the Governor while drafting the Bill and fixing a deadline for its disposal.

Kerala has asked the Supreme Court to form a seven-judge Bench to review a five-judge Bench judgment in the 1962 Purushothaman Nambudiri versus State of Kerala case which held the view that Article 200 did not provide "for a time limit within which the Governor..... should come to a decision on the Bill referred to him for his assent". The State said that, at the time, the court did not consider the possibility of Governors holding back Bills for an indefinite time.

Expected Question

Que. Which of the following discretionary powers have been given to the Governor of a state?

1. Sending report to the President of India for imposing President's rule
2. Appointment of ministers
3. Reserving some bills passed by the State Legislature for the consideration of the President of India
4. Making rules for the functioning of the state government.

Select the correct answer using the code given below:

- (a) 1 and 2 Only
- (b) 1 and 3 Only
- (c) 2, 3 and 4 Only
- (d) 1, 2, 3 and 4

Answer : b

Mains Expected Question & Format

Que.: Discuss the contradiction that exists between the powers of the Governor mentioned in the Indian Constitution and the powers currently exercised by them.

Answer Format :

- ❖ In the first part of the answer, discuss the powers of the Governor as described in the Indian Constitution.
- ❖ In the second part, discuss the powers currently being exercised by the Governors in the states and also discuss the contradictions arising from it.
- ❖ Finally give a conclusion giving suggestions.

Note: - The question of the main examination given for practice is designed keeping in mind the upcoming UPSC mains examination. Therefore, to get an answer to this question, you can take the help of this source as well as other sources related to this topic.